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Speeches presented at the annual meeting of the American Association of Presidents of Independent Colleges and Universities are: (1) "Legal and Legislative Problems in Higher Education" by Dr. Dallin H. Oaks; (2) "Government and Private Higher Education" by Dr. Robert A. Goldwin; (3) "A Foundation Manager Comments on Independent Colleges and Universities" by Richard A. Ware; (4) "The Market for Goods and the Market for Ideas" by R. H. Coase; and (5) "The Independent Sector and the Public Interest" by John R. Silber. (Author/KE)

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Private Higher Education: The Job Ahead

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Volume 4

American Association of Presidents
of Independent Colleges and Universities
1975 Annual Meeting Talks
Scottsdale, Arizona

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Preface

The American Association of Presidents of Independent Colleges and Universities was founded to provide an opportunity for the presidents to exchange views and compare experiences, to examine common problems and seek answers to them, and to take formal action on matters of special concern to private college presidents.

Membership is open to the chief executive officer of any private college or university that has regional accreditation.

At the annual meeting held in Scottsdale, Arizona, in December 1975, it was voted to publish the formal speeches for the benefit of both members who could not attend and others interested in higher education.

$2.50

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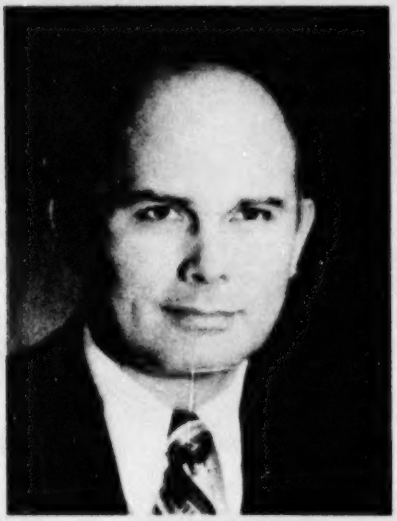

Dallin H. Oaks

Dr. Oaks took office as President of Brigham Young University in August 1971.

He received his B.A. degree in accounting from B.Y.U. and his Doctor of Law degree, cum laude, from the University of Chicago Law School.

He practiced law for three years specializing in corporate litigation. Dr. Oaks then became Professor of Law at the University of Chicago, Associate Dean and then Acting Dean. He was Executive Director (1970-71) of the American Bar Foundation, a large professional research organization affiliated with the American Bar Association. He has published five books dealing with the subjects of church and state, trust law, criminal procedure, legal profession, and legal history. He has been a Director, the Secretary and presently is President of the American Association of Presidents of Independent Colleges and Universities.

Moderator: Dr. George C. Roche III
President
Hillsdale College

Chairman: Dr. Dallin H. Oaks
President
Brigham Young University

Panel: Attorney James M. Cowley
Latham and Watkins
Los Angeles

Attorney Hal Visick
General Counsel
Brigham Young University

Legal and Legislative Problems in Higher Education

GEORGE ROCHE: MODERATOR

The speakers this morning are, first of all, James Cowley, who is a partner of Latham & Watkins of Los Angeles. He's a specialist in non-profit organizations – and we have a number of these here, some even less profitable than others – charitable giving, estate planning. His law degree, not too surprisingly, is from the University of Chicago.

Hal Visick is Assistant to the President and General Counsel of Brigham Young University. He is a specialist in tax law with a special emphasis on federal legislation, present and proposed. His law degree, inexplicably, is from George Washington University.

And finally, Dallin H. Oaks is familiar to everyone here as the President of Brigham Young University since 1971. He is the Secretary and Director of AAPICU. He was a professor of law at the University of Chicago from 1961-1971 and, again, not too surprisingly, his law degree is from the University of Chicago.

The session that these three gentlemen have planned for us this morning is especially appropriate. It's the most valuable kind of thing – or one of the most valuable kinds of things – that our organization could possibly undertake. It is a serious nuts and bolts discussion by experts in the field examining various forms of governmental intervention in higher education, and some of the actions that have been taken and can be taken; some of the problems that confront us in one fashion or another. Something of this sort is invaluable, especially when it is a free give-and-take of three such distinguished authorities who have so much to tell us in the particular area. This will be a little less formal than some of our meetings. It will simply be a matter of one or another of our three participants discussing one or another of the many areas where government is touching our concerns these days.

DALLIN H. OAKS

Our session deals with a multitude of different subjects. As George indicated at the beginning, we do invite interchange. If you have a question as we go along, raise your hand.

TITLE IX

On the subject of Title IX, we have had a good deal of publicity, and I won't recount the things that you have already read. I will simply say that in my judgment our legal position in the area where B.Y.U. has made its challenges is sufficiently strong and the climate of public opposition against unnecessary regulation is sufficiently strong that we are not likely to have a head-on court confrontation with HEW on this matter.

The mail that we have received at Brigham Young has been about 98% in favor of the position we've taken, and it runs up over a hundred letters. More than half of the letters have come from people *not* part of our own religious community. I am satisfied that in this challenge we have touched a very sensitive nerve to all Americans.

I think that in the months to come we will have additional institutions who will take a public position against the Title IX regulations. It won't be the same position Brigham Young took and it won't be the same position Hillsdale took, I would venture to guess. Personally, I think it would be unfortunate if institutions made the same challenge that Brigham Young had made, or that Hillsdale had made, because each institution is different – each has a different set of educational programs and priorities and different affiliations. Any set of regulations as pervasive as the Title IX regulations touches on many different aspects of institutional policy. Something that doesn't make any difference to Brigham Young University can be a life-or-death issue to someone else. So I have generally said that because I believe so strongly in diversity, I would be disappointed if the challenges to the Title IX regulations were identical to those of Brigham Young University or Hillsdale College.

Unless there is a specific question on Title IX, I would propose to go no further on that subject at this time, because the things that remain to be done on that matter involve individual institutions rather than Association policy, except the matter of a possible AAPICU resolution.

Question: If there were a formal confrontation with the Government what form would it be likely to take?

Answer: There are at least two different approaches the government could take. One is to blackball our students from receiving Veteran's Aid, BEOG Grants, guaranteed loans, etc. That approach strikes me as unlikely because it is punitive and politically unacceptable. The second approach would be to cut off the offending institution from government aid. At Brigham Young we receive no categorical assistance, so that's not a very attractive way to respond to our challenge. We do have a relatively small amount of government research contracts where we give value in return, but we could get along without those research contracts so they can't hurt us much by cutting them off.

Question: What about the challenge to the tax-exempt status of independent institutions?

Answer: I am not sure. Our Association has made some approaches to attempt to set up a meeting with him, and we're still hopeful that this can be done. We are hopeful that Matthews' coming into office and President Ford's recent speeches at Pepperdine and SMU in support of institutional independence have created a climate that will be persuasive for our cause. We have a lot of friends in Congress on this issue, and we are hopeful that Secretary Matthews will hear their voices and be helpful to us and get some of the middle-level bureaucrats off our backs.

HAL VISICK

TAX REFORM

Well, as you probably are aware from the newspapers this morning, there has been some effort in the direction of tax reform which has now been passed by the House. This does have an effect on charitable giving which of course is a matter of great significance to all of us. I just returned yesterday from Washington where I met with a group representing various independent colleges who have organized a national network to try to deal with our items such as this. As you know, the Filer Commission has just given its report, and as a part of that report, they commissioned Martin Feldstein of Harvard University to do some computer studies on the effect of various tax reform advocates including members of Congress, and what they would do to charitable giving. Now, the bill as it came out of the Ways and Means Committee, would have a very minimal effect on charitable giving, according to the Feldstein study which is based on data obtained from the Internal Revenue itself.

This bill did, however, contain a number of fairly controversial tax reforms until Congressman Jones was able to persuade the Committee – that is, the Rules Committee – to report this bill under what's called a Modified Rule. In the past, all tax measures have been reported under a closed Rule which means that no amendment may be offered from the floor. In this case, this bill was reported under a rule which allowed six amendments to be considered. Among those in an amendment sponsored by Congressman Jones referred to as the Jones MTI Amendment. *We have concluded that this amendment would be harmful to charities.* The Jones Amendment, as proposed, put some cost pressure on gifts by certain types of individuals.

The interesting thing about the Feldstein figures – computer figures – are that for the first time it's been clearly demonstrated that people make their giving decisions based on the cost of making gifts. To the extent that charitable deductions reduce the cost of giving, donors tend to give more. When donors' charitable deductions are used up, they tend to give less. Feldstein ran a whole series of computations based on proposed tax reforms to see what effect the changes in the cost of giving would have and what the actual cost in dollars going to charities would be for any given change. One of the reforms tested was similar to the Jones minimum tax proposal. Feldstein's conclusion was that the Jones Amendment would decrease overall charitable giving in the United States by the amount of $155,000,000 – slightly under 1% of total charitable giving. However, this so-called reform would have a much greater effect on higher education. Higher education institutions receive large gifts more frequently than do other types of charities. **Therefore, the effect on higher education would be to decrease total giving by 25.8 million dollars out of a total projected of $657,000,000, roughly 4%. This gives us some incentive there is reason to oppose the Jones Amendment.** This amendment puts pressure on the type of donor we seem to concentrate on in higher education – the wealthy person who values higher education, and may wish to perpetuate his memory or that of others.

There are, of course, many changes in this tax bill, or it wouldn't be called a tax reform bill. This Jones Amendment cleverly joins two ideas: One is to eliminate Title I of the tax bill which deals with artificial accounting losses such as oil depletion, depreciation on buildings in excess of any anticipated income, and similar phantom deductions. Second, they added Mr. Jones' minimum tax proposal. The result is that two different types of people are interested in sponsoring the Jones Amendment. One would be the so-called Liberal Tax Reformers in the Senate who want to see everybody pay some tax regardless of their deductions and accounting losses (perhaps that's a laudable goal). These reformers are united with those who wish to protect the oil depletion allowance and other artificial accounting losses. This unites the Southern Democrats, most Republicans, and the liberal tax reformers.

You should be aware that this is only Phase I of tax reform. The House has tried to pass a bill which could go to the President before the end of this year because of the tax cut proposal which is included. This portion of the bill continues the tax cut which was enacted last year. But the Ways and Means chairman has made it clear that the committee intends to go over many other tax reform proposals and report out a second tax reform bill during the next year.

This tax reform will not be confined to the minor scratch upon the face of charitable giving represented by MTI. We will see other tax reform proposals as we go along. Senator Long, chairman of the Senate Finance Committee, has indicated that he intends to split the House bill in two. He will cut off the tax reduction proposals, hopefully persuade the Senate to pass them immediately, and send them to the President's desk. The remainder of the House bill, the so-called tax reform proposals, will be retained in the Senate for some time and will be extensively studied. He probably has the power to carry out this program unless there's some sort of rebellion among the more liberal

members of the Senate, which seems extremely unlikely.

What can we do about the present bill? It seems to me that everyone should inform his Senator of the fact that MTI does some harm to charities.

Now, the way to contact a Senator, at least in our judgment, is not necessarily for the president of the college to call him up and talk to him about it, although there's no harm in that. However, a much more subtle and stronger pressure can be exerted by having trustees or other friends of your institution who are personal friends of, or to whom the various members of the Senate are beholden, contact them. Such contacts should not be made on behalf of a specific college. These contacts should express concern for the effect on all charitable giving. The United Crusade and other charities with which our contacts are involved should be mentioned so that we do not become exclusively advocates for higher education. What harms us harms giving generally. That kind of message ought to be transmitted to the members of the Senate. Now there is an extensive minimum tax proposal in the bill passed by the House which has no effect upon charitable giving. Our position, it seems to me, ought to be to try to preserve that one, rather than to say all minimum tax is bad. What we're trying to do is preserve the general exemption which has always existed for gifts to charity. We should point out that charitable giving is not like other so-called tax incentives, or, as some people insist on calling them, "loopholes." (Charitable giving is entirely voluntary.) It always costs the giver something. He must give away money in order to take advantage of the deduction. By itself, charitable giving can never exempt anyone from tax. He must lump charitable contributions with other deductions in order to avoid paying tax.

Furthermore, there is a measureable public good which results from charitable giving. Selfish interests are not promoted by this deduction. The charitable gift performs useful functions which must otherwise be performed by government. No surcharge is imposed on the gift to pay the cost of collecting and administering the funds. If charitable institutions are done away with, then the government must pick up and do the functions they are now performing. There's a lot that can be said for preserving the deduction as it now exists.

The greatest advocate of change as far as I know is Stanley Surrey of the Harvard Law School faculty; a very well-known and highly respected scholar. Mr. Surrey has managed to persuade a great many people in Congress and elsewhere to look upon deductions, and particularly the charitable deduction, as a tax subsidy. Mr. Surrey contends that deductions are the equivalent of the government spending its own money for the purposes for which the charitable contributions are used. Carried to its logical extension, that position is the same thing as saying that the government is entitled to collect all the money that's made in the United States, and anything it leaves in the hands of the individual to do with as he pleases, such as to contribute to charity, is merely a boon permitted by the government.

Even Stanley Surrey, however, has not found a satisfactory substitute for the charitable deduction. He appeared on television a couple of weeks ago, with Bill Buckley, and they debated this subject. Finally, Surrey had to admit that he himself had not devised an adequate substitute for the charitable deduction. Therefore, for the present, he advocates its continuance. This was a great relief to me. It's always struck me as rather unusual that someone who is being paid by an institution which obtains all its support through charitable gifts would be making such an extensive attack on the system of charitable giving.

Mr. Surrey feels that because the government is, in effect, giving money to charity by allowing the charitable deductions, it ought to regulate every aspect of the operations of charities. He is one of the principal advocates of the kind of regulation you have seen recently from the Department of Health, Education, and Welfare. However, he would base regulation on federal tax laws.

We will see a number of attempts at tax reform. That is what's going to be done in the next few months to try to modify the charitable deduction. One of these will be the attempt to collect the capital gain which has accrued on property going to charity by will or by gift. In other words, if you bought a piece of property or stock for $10,000 and it's now worth $20,000 the reformers will want to impose some kind of a tax on the increase. They propose restricting the deduction to cost or only on portion of appreciation or to impose a gift or estate tax on the appreciation. The effect of this would be very costly to charity. Under present law if you give stock worth $20,000 you receive a deduction for $20,000, even though the property originally cost you $10,000. Of course, from a balance sheet point of view, that makes a lot of sense. You have a $20,000 asset at the time the gift is made. When you give the property, you're $20,000 poorer. Therefore, you should get a deduction of $20,000. This proposition will be attacked on the theory that somehow the donor is escaping tax.

Some of the reformers would like to treat this transaction as a sale. This means that if you gave stock worth $20,000, you would pay a capital gains tax on the $10,000 appreciation. You would then take your $20,000 deduction. The effect on people in high tax brackets would be to increase the cost of giving by 50% or more. Now, anybody can see that's going to reduce charitable giving.

There are some people who would like to do away with the charitable deduction entirely, along with all other deductions. It's impossible, really, to assess what the effect of that would be, because everyone's net tax bracket would drop considerably. This proposal might not hurt us as bad as might be feared. According to Feldstein's figures, eliminating the deduction entirely *would cost educational giving 48% of all it is now receiving.* If his figures are accurate, and according to Feldstein they're in fact quite conservative, you can see that this would be quite disastrous.

There are others who wish to replace the charitable deduction with tax credits. In other words, you would get a credit against your tax for all of your gifts. This would probably have a positive effect on the giving, but adoption seems unlikely, because the cost to the Treasury would be extremely high.

Another proposal is that all the money going to charity ought to be collected by government. The government would then grant money to the various institutions. A related proposal is that the government make a matching grant to whatever charity individuals make gifts. In other words, if I give $1,000 to Brigham Young University, the government will give $1,000, but I will receive no tax deduction for my gift. In effect, I'm able to give twice as much that way. *That proposal would produce a rather substantial loss in revenue, and, of course, it would bring government control over spending to a far greater degree than at present. The only way you could avoid government control would be*

to refuse the matching grant, and, therefore, in effect, to cut your receipts from individual giving in half.

Well, I won't detail them all. There are hundreds of tax reform proposals. Most would not be nearly as efficient in generating income for charities as the current deduction. It doesn't cost the government any money to collect the charitable contributions going to the private institutions now. The money is given, the charities themselves keep the records. There's no loss for administration in Washington who would count and distribute funds. There is no tax on the cost of producing this money. The charitable deduction works automatically and presumably those who are best able to tell their story and deserve the greatest support are getting the most money. In some cases, perhaps, we are not quite satisfied with the way the contribution dollar is being spent. Nevertheless, all charities are free to compete for funds. Presumably those who reach a level of excellence sufficient to attract support, will obtain support. If the government administers the program, who knows what the criteria will be. I think it ought to be clear that everyone should be informing their trustees, keeping an eye on what the tax reform proposals are, and trying to get our story to the members of Congress as these proposals are considered. Probably the least effective method of doing this is our appearance before the various committees considering these bills. Hearings are always stacked in the way that the Committee staff has planned. If there is one advocate from Hillsdale College, there will be twelve advocating whatever position the staff wants to advance. This is not the most effective means.

The most effective way is the "behind-the-scenes" contact by people on whom the members of the Congress are dependent. Our trustees and other people of influence are those to whom Congressmen will listen. If our story is logical and strongly told by people like this, we'll make progress. We should seek out specifically the members of the House Ways and Means Committee, and the Senate Finance Committee.

Question: Did you say anything about the carry-over provision?

Answer: I haven't seen a direct legislative proposal on that, but there are those who would want to restrict that and to some extent, MTI does affect that a little bit. MTI cuts down the amount that you can use each year. The net effect would be to reduce the 5-year carryover. I'm thinking of a gift we have now. The donor gave us approximately $5,000,000. He has only been able to use up, even over the 6-year period, about 1.2 million. The rest is lost.

Question: Would you say a word or two about the Filer Commission?

Answer: I'd be happy to say a word or two about the Filer Commission because this is important. The Filer Commission is a nickname. I never can remember the official name . . . the Committee on Private Philanthropy and Public Needs. The Filer Commission is a group of very distinguished people, most of them the presidents or former presidents of major U.S. corporations. The Commission was established at the request of Congress and funded by several large foundations. Its purpose is to study public giving in the United States and to make tax recommendations.

The Filer Commission has just published its report. The Senate Finance Committee and the House Ways and Means Committee have received their copies. The report is now being printed and will be available to the public, I understand, for $1.75 a copy. The Commission, itself, has come out in favor of continuing the charitable deduction, even though some of the early drafts prepared by the Commission's staff were very critical of the deduction.

About the only criticisms of the present system made in the report are that the low-income giver – the poor person who does give to charity – doesn't get the sort of tax benefit a rich person gets. Now, of course, this effect is produced because the rich person is able to give enough money to take advantage of the deduction. The poor person gets a greater benefit from the standard deduction than he would from the charitable deduction and thus doesn't use it. But some people feel that this is somehow inequitable. The Filer Commission has proposed that there be a system of tax incentives for low-income givers. In in effect, they would be able to deduct twice the amount of their gift if they make less than $15,000; once-and-a-half the amount of their gift if they make less than $30,000; and the amount of the gift if over that. This is not a legislative proposal, it's merely a recommendation they have made.

Question: That in addition to standard deduction, Hal?

Answer: Yes, they would still be allowed to take the standard deduction in full. Of course, since many of us are poor folks under those standards, that would be beneficial to people like university professors and others who give to their own colleges. However, the cost to the Treasury would be high. Therefore, I think this proposal will *not* receive administrative support. If you give a tax deduction double the amount of the contribution, the loss in taxes may be greater than the benefits received by charity. Our whole argument for the deduction, really, is that it produces more money than it costs.

Another proposal for change advocated by the Filer Commission, and one which I find hard to justify, is that more records be kept and more extensive reports be required by charities. Since we're already buried under gigantic piles of records, and have to hire extra people to do nothing but keep records for the federal government, this could only exacerbate that situation. I'm sure all the members of the commission would say one of the principal problems they have in their business is excessive federal control. Nevertheless, they have proposed that federal control of charities be extended.

They've made another proposal which I, personally, do not support. This is that a commission like the Filer Commission be made a permanent aspect of the federal scene – kind of a watch-dog from the private sector – to oversee charitable giving. This can only become one more source of irritation. There will always be someone looking over your shoulder whom you have to satisfy on various aspects of your operation.

The Filer commission report will be with us, I'm sure, for the next ten years or so. It's basically favorable, and therefore, basically good. I don't know that a really coherent attack could be made on the parts you don't like without also seeming to attack the parts you like.

There is a minority report which has been printed, not as part of the Filer Commission's report, but as a kind of protest. You can depend on it, that the advocates of various hostile positions will quote extensively from one

or the other. We will be living with quotations from these reports for a long time. It could have been much worse. If it were not for very strong-minded individuals on the Commission, who simply refused to adopt the staff position, and redrafted the whole thing themselves, we would have a report favorable to our enemies. I think, on balance, we have a rather well-done report. I have not read through it, I've only read the summary, but it's far better than any of us had really hoped it would be.

Thank you.

JAMES M. COWLEY

IRS AUDITS

I'd like to make a couple of further comments on the Filer Commission report. I think you should obtain copies of the report and the compendium of staff studies. A great deal of effort and money went into some very detailed studies, such as the Feldstein Study that Hal has been referring to. It will be grist for the mill in the future waves of tax reform that may affect charitable giving, and I think this is something you should have on hand and be familiar with, in the important roles that each of you have.

One of the recommendations, that on its face doesn't sound all that troubling, is that the self-dealing and other similar rules now applied to private foundations as a result of the 1969 Tax Reform Act be extended to all public charities as well. That sounds perfectly reasonable. Why should organizations be able to deal with related parties; the potential for abuse is terrible -- let's eliminate it. Congress did that in what's called ERISA, the Employees Retirement Income Security Act (the pension reform bill), and created such a wave of paperwork, legal work and bureaucracy that pension funds are finding it very difficult to acquire the basic services that they need to function. This is because almost anybody who performs services for a pension fund becomes a disqualified person, or party-in-interest, and therefore can't perform services for it. That is not a gross over-simplification. It is very close to the heart of the problem.

Higher education institutions particularly, and charitable organizations in general, attempt to get their donors interested in the running of the organization -- get them on the Board of Trustees, involve them, get them committed from a philosophical and emotional standpoint, as well as a financial standpoint. In this context, you would have all kinds of trouble living with the private foundation rules, which are very arbitrary. I have a 50-page memorandum on my desk right now explaining to a private foundation just what in the world it can do about a situation in which it inherited a note of a disqualified person. The note was given to it by will, apparently creating an act of self-dealing under the regulations, and getting out of that act is a horrendous task. These things have to be corrected or undone. I don't think it is within the capabilities of the lawyers to resurrect the donor, so we're having some difficulty resolving this problem -- and the problem shouldn't exist at all.

There is, as you all know, a whole wave of expensive, time-consuming and troublesome, however well-intentioned, regulations and directives emanating from Washington to private independent colleges and universities these days. Title IX, The Family Educational Rights and Privacy Act, TIR 1417 (the racial discrimination guidelines which have just come out and about which I believe you'll hear more from Mr. Goldwin this morning). One of these which is least apparent, because it doesn't get announced in the newspapers, is the Audit Program the Internal Revenue Service is pursuing with respect to major charitable organizations -- in fact, all charitable organizations -- but right now they're concentrating on higher education. As I think most of you know, absent unusual circumstances that result in publicity or complaints, the IRS has never audited colleges and universities before. In fact, until 1970, they weren't required to file tax returns. So, this is the first look at a former sacred cow, in the minds of the IRS. In the post-Watergate era of exposes and investigations, the IRS is pursuing it with a good deal of interest and some of the agents are having a little sport with their victims.

To show you the scope of this program, there is an institution in California which has been in the process of being audited for many months now by a team of five full-time agents. Although the agents will go out and fish around, if you'll let them, they are required under their own procedures to put requests for specific information in writing. They number these requests and your response is required to be in writing. The last time I heard (this was two weeks ago, so it could well be higher than this now), the last numbered request that this institution had was number 371.

I had in mind asking by a show of hands how many of you have been audited. I then realized that this is privileged, confidential information and you don't need to reveal it to anybody. Then I thought about asking how many of you had not been audited. Then I . . . (laughter) . . . I decided not to do that, either.

In the hope it's not too late, that there are some of you who have not been audited yet, it might be useful for me to offer a few suggestions as to what you do when these fellows show up on your doorstep some morning.

They probably won't show up on *your* doorstep -- the president's doorstep, that is. They would like to enter at a lower level and be relatively inconspicuous, and not alarm anybody. They act very friendly. They've learned that you can catch more flies with honey than with vinegar and so they like to get in and become someone's buddy. I'm not saying that the IRS audit program is wrong. (It *is* a little anomalous to see a government which has been shocked by seemingly endless revelations of its own corruption out on some endless quest for perfection in the administration of private institutions on the theory that since they're somehow related to government monies they've got to be accountable.) The Internal Revenue Service has a function which can even be helpful for organizations, particularly when they haven't been audited before by an outside agency. Your CPA audit is only a financial audit -- the IRS audit is an *activity* audit. Of course, they're doing the financial audit as well, but they're looking at your activities more than they are the financial end of things. I'll touch on some of the specific activities that they are paying particular attention to a little later.

The IRS audits have a very broad scope. They're interested in anything and everything, and if you aren't careful, they will slip in and get things rolling and nobody upstairs will know what's going on. The attorney for the university probably won't know the audit is happening and the people who are handling the audit probably don't know what it means. They don't really understand the significance of the audit, what their rights are, and whether they have to comply with every whim of these people. Most middle-level college administrators are too easily intimidated by the auditors.

I think it is important, if your organization has not been audited, that you anticipate that it *will* be audited soon, that you communicate that expectation to your financial vice-president, your controller

and your other administrative people who might be the logical contacts for the auditors. The notice usually comes as a little form letter saying we'll be out to look over your 72/73 return and we'd like to see the minute book and a few things, and we'll call you and make an appointment. It usually goes to the person who signed the return (the 990). When that letter comes in, unfortunately it doesn't look like a red flag, but it is, and it requires that you make some decisions as to how this process is going to be handled, or else you'll wind up not handling, or mishandling, it.

I think that in most cases the major penalty imposed on the institution by the audit program is the cost and effort required by the procedure itself. You've got several dilemmas: it's very time consuming and expensive to put a top-level person in charge of the audit, but it's also very dangerous to delegate it to somebody too far down the line who really doesn't have the discretion and the fortitude to stand up to these people when they make unreasonable requests. I would suggest that if your institution is fortunate enough to have house counsel, that you put that person in charge, when this process starts, and that you alert and discuss with your outside counsel – whether or not you have house counsel – the fact that it's starting. The most important thing is to set up proper procedues for handling the audit. Counsel can be particularly helpful in this and in acquainting you with your rights and responsibilities. Although it won't be terribly helpful in some of these areas, copies of the IRS's own exempt organization audit manual are available as a result of the Freedom of Information Act. This gives you some idea of the directives that these agents are operating under.

The IRS will use and abuse your manpower if you let it. Theoretically, they can't compel you to go through your records and create statistical studies for them, but you're given the choice of either doing it for them, or giving them all the records, and letting them take whatever time they want. As an example, they were interested in a tuition-remission program. (This is one of the issues they're looking at – whether or not there should be taxable compensation to somebody when you give people free tuition – employees, staff, and their children.) They wanted a survey over a year's time of who did use it, what their relationship was to the institution, and so on. It would have been a $10,000-$15,000 task to figure all that out in a meaningful sense for any significant institution. I think we backed them off on that one. That's the kind of request they'll make, and if you've got somebody running the audit who's too concerned about being cooperative and liked, then you may find you're spending a lot of money and other projects that are important to the university are backlogged.

I think it's very important to have only one person at the institution in charge of the audit – that one person be the person through whom all the requests are given and through whom all responses are given. All written responses should be cleared by counsel. The IRS requests are asking institutions to take positions – explain things, explain people's motives in making gifts and imposing conditions on gifts, or entering into transactions of one kind or another. Generally, don't try to speak for others. Don't attempt to explain what the motives of your donors were in making a particular kind of gift.

The most important thing is to keep this contact point between the Service and the institution under control. A common technique is to isolate the auditors – give a room with nothing else in it that they can use exclusively, if they have to be on campus for any period of time, and feed them the information that they ask for one item at a time. Keep a good record of what they've seen, keep copies of what they've copied and organize it all. They'll give you written requests. You should keep a file of copies of each request and everything submitted in response to each request. If the IRS comes up with a problem later on, you're going to be awfully confused as to what to do about it if you don't know on what basis they are making their determination.

They'll also buddy up to secretaries, and when you're not around, they'll say, "Well, gee, I just needed to see, you know, this file. Would you mind getting it for me?" If your secretaries aren't properly informed, they'll wind up being cooperative and friendly and going off and getting it for them and then you'll lose control of the process. Legally, there aren't many things you have a right to keep from them. But it is important, I think, to have control of the process and evaluate the reasonableness of the relevance of the demands that they're making.

Keep in mind the attorney/client privilege that applies to your correspondence with counsel, both house counsel and outside counsel. Be careful when you give them files that you don't inadvertently waive that privilege as to attorney/client communications in those files. This may be particularly important in transactions where your own internal evaluation of tax consequences could be damaging to a donor's tax position. If the IRS reviewed all the pros and cons you were looking at in a particular complex transaction and then went out to see the donor, that could be embarrassing to you. Those audits *are* triggering subsequent audits of university employees, university officials, trustees, donors, etc. In fact, the manual encourages agents to look for clues and leads and refer other audits to other sections of the IRS.

If you have a firm of CPAs doing an annual audit, they'll ask for copies of any so-called "management letters" you might have received from your CPAs. These – as you probably know – are letters that come at the end of the audit from the CPAs saying, "This is how you ought to clean up your act." I would attempt to get your CPAs to stop issuing that kind of letter – if they find criticisms, let them communicate them orally and you can discuss them and decide what to do about them – because there's no privilege available to keep the IRS from seeing those letters, which can be embarrassing. You might review that file if you have one to see what kind of recommendations have been made and to see if you've implemented them. And if you haven't implemented them, why?

The IRS will ask, with a straight face, for copies of all returns and reports filed with *any* other government agencies. If you are involved in federal programs of any magnitude, you realize that this is a colossal amount of paperwork. They want to see all gift receipts. They'll examine all life-income transactions, and, of course, they'll review the minutes of the Board and committees to be sure the proper authorities have been created and delegated for the various transactions that have taken place.

They may not actually ask for *all* of these things. If it's too large a task, they may just sample. If they find anything particularly interesting in the sample, then they may take a broader sample, but if they don't, they may let it go.

Question: Is it possible to ask them to pay for the cost of compiling information for them?

Answer: That's an interesting question. There have been some developments reported in the newspapers lately. The banks have pressed the issue when

they've been asked to provide records and search their records to provide information about depositors. A bank recently was successful in demanding that it be paid for the cost of doing that for the government, and other banks are following suit. In Los Angeles there's an investigation of a prominent doctor and his bank has been awarded $12,500 to provide the information that has been subpoenaed by the investigators. I don't think that's too helpful a precedent for an organization being audited by the Internal Revenue Service. The banks have a good argument that they are just innocent by-standers and why should they have to pay the expense of this. The institution is not an innocent by-stander – it's the non-taxpayer being audited. But the important thing is to take a firm position and insist that the request be reasonable in scope, reasonable in nature and relevant to the inquiry and attempt to negotiate the auditor's requests down to manageable proportions and avoid unnecessary photo-copying and that kind of thing.

Question: Is there anything they are not entitled to see?

Answer: The only thing I can think of would be the attorney/client privileged matters.

Question: You raised the question of reasonableness. Do you raise it with the team that's on your campus or at their headquarters?

Answer: I would recommend that you deal with the team on your campus, initially. If you feel *they* are being unreasonable, then by all means, ask to talk to their supervisor, and take it on up the line. The exempt organization area has been extensively reorganized lately, and the regional commissioners for EPEO are by and large pretty capable people. I'm impressed with the qualifications of the fellow in Los Angeles, and he seems quite sensitive to these things. By the way, the current regime of the Service is very, very publicity-shy. All through the audit manual there are explicit references to being careful not to generate unfavorable publicity. For instance, the audit of any major charitable organization – nationally-known organization, or nationally-known university or college – has to be approved in advance by the national office. The district directors and the regional commissioners can't initiate those audits on their own.

Question: If you've already had an audit, and received a statement of clearance, what kind of action can the government take after that point?

Answer: Well, I think that theoretically they're not bound by that – if something else should come to their attention – until the Statute of Limitations runs on the return for the period covered by the audit. As a practical matter, it would be very unlikely that they would go back and take another look at it unless some flagrant incident of some kind came to their attention that they missed in the audit.

Question: So you're saying that the institution is totally open to review at any time, even though it's received a statement of clearance?

Answer: Yes, but as a practical matter you do have the three-year Statute of Limitations running on the year.

Question: And that means what?

Answer: Three years from the date of the filing of the return, assuming it was timely filed.

Question: They could come out during the years after the year they have already audited?

Answer: Oh, they do. They're going to be hitting you on a cycle of two to five years. Having been audited once doesn't mean you're home-free. You can expect that this is just one of the costs of doing business now.

Question: How large is the exempt organization branch?

Answer: I can't say how large it is, but it's probably 10-20 times as large as it was five years ago. They have gotten so well organized now that they have schools – all the good agents that I've dealt with are now teaching to train exempt organization specialists within the Service itself. These Agents tend to be people who aren't highly technically skilled. They're reasonably competent people, but they haven't had legal or accounting training in many cases. They probably are all college students, I guess. They take a specialized short course in this area and they sometimes acquire "a little knowledge." With this training, they sometimes tend to get some half-baked notions of the concepts that are applicable to exempt organizations, and sometimes have to be educated as to what the law really is, and will often accept such an education.

Question: How many years . . . ?

Answer: I'd say since the '69 Act that the staff in the exempt organization area has increased at least tenfold. Obviously there's a need for it because of all the provisions that were applied to exempt organizations. But, also, the Service has some leverage, because the 4% audit tax on private foundations is producing three times the amount of money it took to audit private foundations. Therefore, Exempt Organizations went in and said, "Hey, we need a little bigger budget."

Question: Back to your point about the three-year Statute of Limitations. Is that any different from this kind of case as compared with other kinds of Statutes of Limitations? That is, what specifically are we talking about? Is there institutional protection after the three-year period, or what happens?

Answer: Basically, in the absence of fraud, they couldn't revoke your exemption after the three-year period had expired. They couldn't assess unrelated business income tax. They, by and large, are foreclosed from raising any issues with respect to that period.

Question: Maybe my question is terribly naive, but I would like to assume that there is some rationality in government. What is the productivity in terms of conceivable extra revenue for the government of assigning new staff to these audits?

Answer: Virtually none, and it's just as well that that isn't the way it's looked at. The exempt organizations branch of the Service is something of an anomaly. It's administering a group of people who are theoretically non-taxpayers, and its function is not to raise revenue. Its function is to see that the exempt organizations laws – which happen to be administered by the IRS, simply because that's the main contact between the federal government and the organizations – are enforced. Let me take just two or three minutes and hit the highlights of the substantive issues that are being raised in audits and give some consideration to whether any of these may be important to you:

You may have seen in the papers not too long ago that the Service published a so-called Discussion Draft of proposed new rules on fringe benefits – on the taxation of fringe benefits to recipients. Because the salaries traditionally have been lower than in the business world, there has been a good deal of reliance on the provision of fringe benefits in the security of talented people to work for colleges and universities. The IRS is looking very carefully at travel and entertainment expense reimbursements, particularly looking at presidents' offices and fund-raising offices. As many of you know as college presidents, you often have multiple purposes for trips – some purely for the

college, others may be for other organizations that you're involved in which aren't directly related to the college, and others may be personal. You may combine a vacation trip with a business trip. They're going to look at those and be looking for the possibility of unreported taxable income to the individual who is involved in that kind of thing. They're also looking very carefully at the documentation of the reimbursement for those kinds of expenses. They're looking at club memberships. They want to know how they're used, and they want to see the documentation if it's an ownership-type of membership that usually has to be owned by an individual rather than an institution. They want to see documentation that says that if the university put up the money for that membership, it will get it back. (As a practical matter, I think their concern is highly inflated here.) They're looking at the use of cars – provision of cars, automobile expense reimbursements, expense allowances, and that kind of thing. Expense allowances in general. Use of credit cards. They're looking at provision of housing and the food and domestic service provided, for instance, to a president's home on campus, to determine whether some portion of that might be in the nature of compensation, rather than the carrying out of the university function. They're looking at presidents' offices staff to find out whether there are people there who are working on other than strictly college matters, which might be an improper expenditure of the college's money for political or other activities or for personal benefit of the president. And they'd be interested in any special deals you might have made to lure somebody to work for you, to see whether or not there's any taxable compensation there, such as a tuition-remission program which might, say, allow an administrator or professor to put his children in a private school when he makes the move or other incentives that might be given. They're looking at all payments to outsiders, non-employees of the college, and they want to be sure the W-2s and 1099s have been filed on all those payments, and the reasons why those payments were made. They're examining expenses that might be incurred with respect to fund-raising with major donors – parties that might be given, trips that might be taken to see them in various places, or to go with them somewhere, this kind of thing. They don't know quite what to do about that, but they're looking at it.

They'll look at your 403(b) plan (TIAA) and raise technical issues if your documentation isn't in order, and there are some unsettled questions there. As you know, college employees are allowed to exclude from their income a certain portion of payments made for retirement annuities. They're looking for technical issues in the documentation of salary-reduction agreements for this purpose. They're looking to see if the requirements of the regulations have been complied with, and they usually have, but they have raised one or two issues which surprised me a bit.

The tuition-remission program I mentioned. They seem to be very excited about that one, but I understand that the only authority on it is a favorable private ruling to a prep school, and we're trying to get that expanded right now to a published ruling which will be applicable across the board. They'll look at all the real estate you own – the income, the expenses, any indebtedness against it – to determine whether or not there is any debt-financed income that isn't being reported as unrelated business income. They're looking at dealings with trustees and their businesses and major donors and their businesses. Also, political activities of officers and administrators, and of course, compliance with the racial discrimination guidelines.

It's a nasty chore, having to deal with these audits. I hope that with the smattering of information that I've given, you may be somewhat better armed to handle it when they come.

HAL VISICK
SECOND-CLASS MAILING PRIVILEGES

I presume most of you have, or will shortly receive a letter from the Postal Service saying that mailing of college bulletins and catalogs is not privileged under the second-class mailing privileges. This is, so the post office says, based upon mistaken use of this by colleges and universities, even though as far as I can determine, over the last 50 years, colleges and universities have been successfully mailing these, and presumably the postal service became aware of that at some point during those 50 years. Nevertheless, there are a lot of large colleges and universities that have received this: Brigham Young University is one. The expense would be very high if we have to switch to third-class mailing. It would be in the order of 350,000 a year. It's not a small item.

All the colleges I'm aware of are availing themselves of the various appeal procedures and these, of course, like all government appeals, can be stalled out for very long periods of time, and therefore, some of the big colleges that I know of now have been involved in this for two years, and still have not lost their second-class mailing privilege because of various appeals which are going on and will be followed by court suit. However, there is pending before Congress right now bills which would confirm that the second-class mailing privilege applies to bulletins and catalogs and they're not merely a subsidy of profit-making magazines and newspapers. I won't give you the technical details of why they're challenging this. The bill has passed the House and is now in the Senate. That is, the House bill, but is attached to another bill involving postal budgeting and particular salaries of postal employees which is going to be bottled up in the Senate for quite awhile. Nevertheless, as far as I know, there is no opposition to this bill in Congress, and presumably, it will pass. On the other hand, Senator Eagleton has a separate bill which is not tied to anything in the Senate, and ACE attorney told me he was meeting next week with Senator Eagleton and the attempt was going to be to break this bill loose and run it back the other way, and divorce it from other legislation so it could be quickly enacted. I think that's about the size of it.

JAMES M. COWLEY

In California, the California tax authorities are taking a similar position saying they're not periodicals. The printing of them is, therefore, subject to sales tax, which is resulting in some very substantial bills to colleges and universities.

HAL VISICK

That's an interesting point. Fortunately, Utah is not as progressive as California in that respect.

DALLIN H. OAKS
GUARANTEED STUDENT LOANS

Most of you will have received a copy of a government form that went out during the summer requiring each institution to sign what's called an Agreement Regarding Institutional Participation in a Guaranteed Student Loan Program. This HEW form

requires an institution to certify its compliance with some regulations published in the Code of Federal Regulations late last spring which require institutions to maintain certain administrative and fiscal records, to establish a refund policy according to certain requirements, and to disseminate certain information to prospective students including, for example, vocational/occupational prospects for each major area in the school and things of that nature. If an institution failed to do so, then by about September it would be blackballed, and its students could not qualify for the Federal Guaranteed Loans. This was a late, swift move, a move of real gravity to any institution that had students on Federal Guaranteed Loans.

You are acquainted, of course, from the publicity in *The Chronicle of Higher Education* with the kinds of abuses, principally in proprietary institutions, that had given rise to this move on the part of the Office of Education. Commissioner Ted Bell, of the Office of Education, has expressed the opinion that these regulations should focus on the proprietary institutions that have been the principal source of abuse, rather than colleges and universities sponsored by non-profit corporations. But when his office attempted to draft the regulations on this basis, the General Counsel of HEW gave them an opinion that it would be illegal for the regulations to be limited to proprietary institutions. Consequently, the regulations were issued to apply across the board.

At Brigham Young we concluded that our existing procedures would satisfy the regulations in virtually every respect so that we were not troubled with their substance. However, I know that other institutions were deeply troubled by some of their terms, such as the requirements for refund policies in respect to dormitory charges. In response to inquiries the Office of Education said their hands were tied, but they were hopeful there would be some remedial legislation during the current session of Congress that would give them the legal authority, which they would be quite pleased to exercise, to exclude non-proprietary institutions from these requirements. We signed the agreement at BYU, but only for one year. Now we will hope for some remedial legislation.

MINIMUM WAGE

In a prior meeting of this Association – I think it was two years ago – we succeeded in initiating an effort that resulted in an

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Robert A. Goldwin

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He received his B.A. degree in liberal arts from St. John's College, his M.A. and Ph.D. in political science from the University of Chicago.

He was Dean of St. John's College in Annapolis and Director, Public Affairs Conference Center, first at the University of Chicago, then at Kenyon College. Dr. Goldwin was moderator of a series of 15 TV great books discussions, Dialogue of the Western World, produced by the Maryland Center for Public Broadcasting and shown nationally. Author of several articles on political philosophy and editor of more than a dozen books on American domestic political problems and foreign policy, he was Special Advisor to NATO Ambassador.

Government and Private Higher Education

by Dr. Robert A. Goldwin

Special Consultant to
The President of the United States

Once, at a meeting of academic people such as we are, many years ago, there took place in my presence a brief exchange between a college president, about my age, and a somewhat younger, thought-to-be promising, academic person. The dialogue went as follows:

College president: "I see your future clearly. Within five years you will be president of some college or university."

Response: "I don't think so."

College president: "Why not?"

Response: "Because I don't want to be a college president."

College president: "Why not?"

Response: "Because I don't want to leave the field of education."

The unkind view, that college and university presidents do not truly share in the educational endeavor, is not the view I will express today – in fact, exactly the opposite.

Although I know you are, and must be, managers, and although I know that the concerns that grow out of that managerial responsibility are great and must be addressed, and will be addressed in my remarks, nevertheless it is as educators primarily that I address you, as educational leaders, in fact, as among those upon whose educational understanding the fate of your institutions may depend. For it is my conviction, and my thesis today, that your managerial duties, and the relation to governmental agencies they necessarily entail, can be dealt with successfully only when the practical aspects are transcended and the inquiry is raised to the high level that is the true realm of the educated mind.

You have in common not only that you are presidents of your colleges and universities, but also that they are all private institutions. Let me begin the inquiry right there, with no further preliminaries. What do we mean by "private," when we speak of a private college or a private university?

Can we start by saying what we do not mean? That is, when we say "private," we usually mean not "public." A public college or university is typically one whose board of directors or trustees is elected at the polls or appointed by some governmental officeholder or agency as the law prescribes, whose funds are appropriated by a legislative body out of public revenues, and whose major policies are subject to governmental regulation on all such matters as admissions policy; faculty selection, promotion, and pay; curriculum design; scheduling of classes, duration of terms, and degree requirements; determination of fees and financial aid; class size; design of facilities; disciplinary rules; athletic programs; insurance and pension programs; and so on almost endlessly – all controlled by government, somehow.

In contrast, a private college or university is typically one in which there is no governmental say about the membership of the board; whose funds come from gifts from individuals or foundations or other sources than local government, state government or national government; and, especially, in fact, essentially, for whom no government agency or official regulates or influences admissions, faculty, curriculum, scheduling, degree requirements, fees, financial aid, class size, facilities, discipline, athletics, pensions, or anything like that. If private is the opposite of public, government regulates none of these in a private college or university.

Now I would not have to be in your immediate presence to feel the unspoken comment: "He's got his tense wrong. That is what private used to mean. These days, that kind of independence is not a reality but a lost objective to be regained, to be fought for. What we want, one reason we exist as an organization, is to make it true again that for private schools there is no governmental control or participation in admissions policy, financial aid, faculty selection and promotion, class size, facilities, sports programs, discipline, and so on almost without end." That as I hear your silence, is your comment on my preliminary effort to define "private."

Although I haven't been in the classroom for years, you know that I am by profession a teacher, and my notion of what teaching is, is simply this: Find the best and hardest questions to ask and then try to get others to work along with you in searching for good answers – or for better questions. And the only rule of teaching I ever found helpful was this simple one: Don't answer questions that haven't been asked.

I hope that my teacher's intuition is still functioning. You don't ask: what makes a private school private? You ask: why should there be any doubt about the privacy of private schools and the independence that should follow from it? That is the question I suggest we work on together.

The reason for the question is clear: Everything we say about what characterizes a public school can be said, with some justification, at least in part, about private schools today. We know there is a difference, and we can still say with considerable assurance, this school is public and that one is private, but we wonder now whether the recent and rapid increase in government participation in the operations of private schools has not made the difference one more of degree than of kind. Is it possible that the only difference, or the chief difference, between private and public education is the method by which the money is raised? If so, it is hardly a difference to stir the blood and arouse us to great struggles. It may rally others, but I need a flag that signifies more than who pays the bills.

If this is honest inquiry, and not just dogma or advocacy, then no question should be ruled out in advance. Perhaps it is true, or at least we should ask whether it might not be true, that public education and private education differ only in degree, not in kind. How would that argument go?

There is an element of public benefit in all education, whoever pays the bill. If, as is claimed and is true, the students of private institutions go on to positions of leadership in disproportionately large numbers in all walks of life, then it follows that there is a great public stake in the perpetuation and support of private schools. We all benefit by the increase in numbers and quality of doctors, lawyers, professors, statesmen, poets, painters, and scientists. There is a vital public aspect of private education.

Or look at another side. The taxpayers subsidize the education of students who attend public institutions. But much of the benefit of the skills they develop rebounds to the private benefit of the students, in the form of increased income or increased gratification that is theirs and, in large measure, theirs alone. The taxpayer pays and the recipient keeps much of the benefit entirely for himself. There is a vital private aspect of public education.

In short, any schooling public or private, has a public element – a benefit shared by society as a whole – and a private element – a benefit, to one person, that is not shared. It would seem that private and public education are very much alike in these important educational aspects.

In fact, we all know devoted advocates of good education who deny the existence of any important difference and, on the ground of the public interest, argue that the more public regulation there is of all education, the better the public will be served. The ground, we have seen, for public concern exists. These advocates ask, if the public aspect is there in private as well as public education, why shouldn't there be government regulation to accomplish public objectives, to correct inequities or inefficiencies in admissions, in faculty hiring and advancement, in curriculum content, in financial aid, in racial discrimination, in the best use of scarce resources?

There is nothing outrageous in the suggestion in itself, if we consider only the civic aspect of education, which is important, even if not the highest. We know that in just about every other political society, what we call private higher education does not exist. We must acknowledge that what is considered appropriate and inappropriate for government to do is not dictated by nature, but by the nature of a particular political system. The reach of government powers depends on the "constitution," and here I mean by constitution not just a document, but how a political society has constituted itself, how its institutions originated and are ordered, what kind of citizenry it has, what the country is like, what "the way" of the people is, in the sense that we speak of "the American way," or as in the saying, "that's just not our way." I mean all of that when I say the reach of

government powers depends on the "constitution."

If there were no public concern, private education would have no possibility of surviving, for even though it is not the government that finances private education, it is society as a whole – the public, that is to say – that sustains any private school, even if all of its funds might have come from the fortune of a single person. As we have constituted ourselves, there has been an explicit public decision to foster, encourage, sustain, and legitimate private education. Private education is borne by public endorsement and thrives only to the extent that it enjoys public approval.

The paradox of the public-private distinction is seen most fully in the public decision, embodied in law and carried out by governmental agencies, to give special tax status to nongovernmental institutions to enable them to perform functions that in other countries are performed by government. There is an official decision, very much a part of our national character, basic to the way we have constituted ourselves, that the government will leave to persons or groups other than the government the responsibility for some of the most basic activities of the polity, one of them being education.

Am I not right that the distinction of private and public depends on the constitution? There is a story that illustrates my point well, that a Senator in ancient Rome was expelled from the Senate for the offense of kissing his wife in the presence of their children – his own wife, mind you. Now, what made that seemingly private act a matter of public concern? We may think it an outrageous invasion of privacy, but if we judge slowly instead of rashly we might be able to say, at the very least, that it is possible for reasonable citizens with standards different from ours, in a regime constituted differently from ours, to come to the conclusion that the preservation of their way required such regulation of behavior in the home, especially in the home of a leading citizen whose behavior should be exemplary.

We would consider his behavior not only proper, but a private matter not subject to the law, and we are surely right according to our way, which was not the Roman way. But even we have laws concerning conjugal relations and the rearing of children: marriages are licensed and schooling is compulsory.

My point is to help us see that the assistance this democratic republic gives to the establishment and sustaining of private schools is not rooted in unchangeable nature, but is a reasoned choice that could be reasoned differently. Reasonable citizens of other democratic republics have made all of education a function of the government.

I share your conviction that a significant portion of education must remain free of government control if we are to preserve our liberties, our rights, our way, our constitution. But that conviction is not universally shared, and there are patriotic Americans, devoted to education, who argue that more government control would be beneficial. Although you and I disagree with them, the controversy is not, in my view, one of good guys against the evil ones, nor the voices of rationality against the voices of irrationality. I consider the differences prime matter for reasoned inquiry and argument. I think you and I are right and the others wrong, but I also think we will learn something valuable about ourselves and about education if we consider the arguments on the other side with full seriousness.

Consider, for example, the newly published procedures of the Internal Revenue Service concerning requirements for establishing that a private school has racially nondiscriminatory policies in order to quality for tax-exempt status. These procedures were first published in the Federal Register in tentative form in February of this year, and comment was invited. In mid-November, they were published in final form, greatly revised and greatly improved. I will return to some details shortly, but let us consider first the principle involved.

The program now in final form requires every private school that applies for or seeks to retain tax-exempt status, from nursery school to postgraduate school, whether it participates in any federal program or not, to adhere to regulations concerning admission of students, financial aid, faculty and staff hiring, advertising, publications, record-keeping, and membership on the board of directors. The objective is a worthy one, to make sure that every private school follows a racially nondiscriminatory policy as to students.

Perhaps it is unnecessary, but in order to avoid any possibility of being misunderstood let me affirm emphatically that I think it is reprehensible for schools to practice racial discrimination, or to be guided by any irrational or unexamined principle when they claim to be in the business of education.

My argument is not against desegregation but rather it is for testing every proposed method of combatting racial discrimination with two questions:

– First, does the proposed method impose regulations on all schools, whether they discriminate or not, that jeopardizes their independence and effectiveness?

– Second, does the principle upon which the method is based itself establish the likelihood of future abuse?

These questions should be asked of all worthy proposals, such as the efforts of the IRS to combat racial discrimination in private schools by means of its newly published procedures.

The reasoning underlying these procedures (derived from the opinion and order of a three-judge federal district court, in *Green* v. *Conally*, which decision was later affirmed by the Supreme Court without opinion) is that tax exemption is a benefit bestowed on a school. The court held that no benefit should be bestowed by the government on those whose activities are contrary to public policy. Further, the court argued that tax deductibility for gifts to a school have the effect of a matching grant from the government. The government should not, the court asserted, make grants, however indirect, to schools whose policies are not in accord with public policy. The court ordered that procedures be followed to ascertain that certain private schools do not practice racial discrimination, on pain of losing tax-exempt status.

What can be said about this? One can see at once that these procedures have a great reach because they have been written to apply to every school with tax exemption, which means just about every private school, if not every one. Schools can and do function without government contracts or grants. It is possible, I suppose, for schools to have no students who receive government assistance, not even veterans benefits or guaranteed

loans. But how many private schools can function without tax exemption and tax deductibility of gifts? Practically no private schools are free of the obligation, under the newly published procedures, to show that their policies are in accord with public policy, however private they might have thought themselves to be.

Do you see the irony? The tax-exempt and tax-deductibility provision is our one most emphatic public expression that we wish certain very important functions to be run by persons or groups other than the government. Tax deductibility is the foundation of private giving. Without it, private education in America will not survive. With it, and by varying the provisions of deductibility, we have stimulated private giving to education, to hospitals, to churches, to museums, to opera companies, and to many other charities, thereby keeping them, by public decision, under nongovernmental management, knowing that, in many other very decent free societies, education, and health care, and churches are all controlled by the government. Is it not ironic that these basic provisions – tax exemption and tax deductibility – so massively effective in shaping us as a nation, have been found to be the instruments by which independent activities are brought under government supervision?

Now I want to be very careful to guard against exaggeration. These new IRS regulations don't mention hospitals or churches or museums or any other charitable organizations. The heading says simply "private schools," and the procedures say nothing about curriculum, fees, content of teaching, or anything else unrelated to racial nondiscrimination. But it is not an exaggeration to observe that the principle stated by the court would make possible an extension to every kind of charitable organization that seeks tax exemption. And I see no reason why, again in principle, it could not be extended beyond racial discrimination to all matters that are judged to be "public policy."

It is unreasonable to think that anyone in the IRS wants to run our schools, hospitals, and churches. It is not unreasonable to take alarm at the establishment of a principle that diminishes the independence of private institutions.

We cannot argue that private education is no concern of the public. We have already acknowledged, correctly, in my opinion, that all education is, and must be, a primary public concern. In fact, the public decision to grant tax-exemption forms the basic public support of private schools. Private education is definitely in the public domain. Although we might argue that there are some things that are just none of the government's business, education is not one of those things. Education is very much the government's business.

But I think there is an argument we can rely on, a simple and practical argument. Americans have long experience in having many schools run by nongovernment people, and no experience of the contrary. The people have been wise to make it the government's business not to run a meaningful number of schools. That is what tax-exemption and tax-deductibility are for. To the extent that the government encourages private education, to that extent we gain the advantages of diversity, quality, independence, innovation, and freedom.

To those who might be advocates of public control or regulation of all education, we ought to say these words of advice: In America we have no experience with government-controlled public education in the absence of independent private education. None of us knows, from experience, what government-controlled education in America would be like if there were no strong and vital component of private education going its independent way in our total educational effort. Seeking to learn how private education and public education affect each other by trying to get along without one of them, differs not at all from the proverbial folly of uprooting the plant to see how it's doing.

This argument I rely on is not dogma. It is no more than reasoned common sense, derived from our national experience, our way, the way we have constituted ourselves in America, the constitution of this nation, this people, this government. It seems to me that this is solid ground to take a stand on, and high enough ground, too, to plant our flag.

Let me descend, now, to less lofty heights, and return, as I promised, to some details of the new IRS regulations. The good sense and sensitivity of the Internal Revenue Service is evident in the revisions that were made between February and November, and could serve as a model to other governmental agencies. I remind you that I quarrel with the principle -- that tax exemption should be used to subject private schools to government regulation. But putting principle aside, the IRS has shown how it is possible to avoid excessive and destructive regulation.

Consider just one example, record-keeping: instead of requiring private schools to annotate and keep on file for three years all applications for admission, financial aid, and employment, they changed the procedures so that records need not be independently maintained for IRS if the same information is contained in any reports required by other governmental agencies. There are many other very sensible improvements, but by this one simple alteration they eliminated the required duplication that plagues private schools and costs so much in time, money, irritation, frustration, and aggravation.

It is important that we make every effort to reduce duplication and unnecessary regulation of nongovernment activities. It is more important, however, much more important, I think, to understand why our government should not try to run many things in which the public has a powerful and legitimate interest. If the advantages in liberty and citizen energy resulting from the practice of limited government were widely understood, far fewer activities would be regulated, and where regulated is justified, the approach to it would more often be like the example the IRS has set in several respects in this case, seeking the minimum consistent with law and policy, rather than seeking to extend control to the maximum that might not be forbidden.

I promised to address you as you deserve, as educators primarily, as leaders on whom your institutions ought to rely for educational guidance. Let me ask you, therefore, about your classrooms. What thought have you given, for example, as president of your institution, to what undergraduate students should properly study, as opposed to graduate or professional or vocational students? I know of very few institutions or departments where that question, what should undergraduate students study?

In your institution, are you satisfied that enough study is devoted to political philosophy – to the political works of Plato, Aristotle, Thomas Aquinas, Machiavelli, Hobbes, Locke, Rousseau,

Mill, and Marx? In American studies, do your students devote enough attention to the Constitution, selected great Supreme Court decisions, *The Federalist*, Tocqueville, and Bryce?

If you can honestly answer yes to these questions, you have an unusual school, and one to be proud of, for in my observation there are few, pitifully few, colleges or universities where the undergraduates are asked to study these works with serious care.

And yet, if my argument and analysis are correct, it is in the classrooms that the future of private higher education in America will be determined, just as it was probably in the classrooms that the present ideas that jeopardize private education took root and spread. The questions for the future are, simply, who will run the colleges and universities that are now independent and private, and what effect would a change to government control over them have on all of higher education?

The answers will be to your liking only if the understanding prevails that limited government means that there are some things that are of very great importance to the public that should not be under government control, for the preservation of our liberties and for the vitality of our nation.

Whether that understanding does grow and prevail may settle not only the future of private higher education, but also the question of the future of this Republic.

A Foundation Manager Comments On Independent Colleges and Universities

by Richard A. Ware
President, Earhart Foundation

Richard A. Ware

Mr. Richard A. Ware is currently President of the Earhart Foundation in Ann Arbor, Michigan.

Mr. Ware received his B.A. from Lehigh University and his M.P.A. from Wayne State University. He has been a research assistant, Detroit Bureau of Government Research; Personnel Technician, Lend-Lease Administration, Washington; Assistant Director, Citizens Research Council, Detroit and with the Relm and the Earhart Foundations, Ann Arbor, since 1956. In addition, he was consultant on public welfare, City of Detroit; Assistant Director, Michigan Joint Legislative Committee on State Reorganization; Secretary, Government Committee to Study Prisons and Principal Deputy Assistant to the Secretary of Defense for Internal Security Affairs. He continues to be a consultant to the Office of the Secretary of Defense. He is active in community affairs and organizations. Mr. Ware has published two monographs and the essay, Governmental Research: Challenge and Response.

To establish my credentials to appear before a group of distinguished educators, I am compelled to assume a philosophical stance. My quotation is taken from that unique American tome entitled PEANUTS.

Sitting on a log – as did two of your predecessors – Linus says to Charlie Brown: "When I get big, I want to be a great philanthropist."

Charlie Brown responds: "You have to have a lot of money to be a great philanthropist."

Puzzled, Linus is silent and scowls, finally saying: "I want to be a great philanthropist with someone else's money."

My point is not that you and I are great philanthropists; rather it is that what we do we do with someone else's money. Further, we have a serious problem as we disburse and manage this money without the advantages of a profit and loss statement to measure accomplishment. We are part of the unique independent and volunteer segment of American institutional activity. My remarks are those of one member of this "institutional family" concerned with the well-being of his fellow members.

Foundations as we know them are found primarily in America and are as unique to our country as independent educational institutions.

Foundations care about education. In 1974 28% of 2,278 grants of $10,000 or over approved by 270 foundations were for education – a total of about $200 million. If the funding of international activities, sciences and humanities is assumed to be through educational institutions, then perhaps the total was $350 million in 1974. Even so philanthropy's share of independent college budgets has declined from 12.8% in 1963 to 9.8% in 1973.

Allow me to speak of my own shop. Last year we appropriated $1.4 million, all for education. Your invitation to join you today stimulated me to ask about our interest in independent education as measured by the percentage of funds going to your constituency, especially since our evaluation process emphasizes heavily the quality of individuals rather than whether they are attached to an independent or public institution.

There were 75 grants to independent institutions ($926,000) and 13 ($99,000) to public institutions.

There were 47 fellowship research grants ($261,000) to individual scholars at independent institutions and 24 ($116,800) at public institutions.

Predoctoral fellowships were awarded on the sponsorship of 43 professors at inde-

pendent schools and 28 professors at tax-supported schools.

I had not made these tallies before, so the outcome is a pleasant surprise to one asked to view your world from his. What do I see as your future? What do I look for as we seek opportunities for the investment of funds in human capital?

I start with an overall comment. The long, honorable and impressive record of independent education in the American Colonies and the United States is not a guarantee of the future. You need look only to the United Kingdom for a prediction. Foundations and all non-tax-supported charitable organizations cannot assume their continued existence, if tax policies and regulatory burdens do not permit. No activity will long exist without funds. If the market economy does not function to produce goods and wealth, your institution and mine are starved out of existence. These "environmental factors" are of key importance, but they are not my subject today.

The educational programs over which you preside and the philosophy that undergirds them are directly your responsibility. I would be out-of-order in advising you on such matters. Earhart Foundation avoids a role for which it is not qualified. However, in evaluating requests for scarce resources we keep in mind such items as excellence, innovation, high standards, diversity, open-mindedness, competition of ideas, quality, style, effective use of plant and personnel, overall management, a sense of values – all summed up in the personality and character of your institution. If independent colleges and universities are to attract support, they must be distinctive and effective. Why should a foundation use its scarce dollars for miniature models of schools supported by tax dollars?

I turn now to specifics in random order with the hope that you will find something useful in preserving forward motion and in garnering financial support.

First, one of your own Association publications reports since 1972 the closing of 56 non-public colleges, the merging of 12 and the passing to public control of 9. To me this roster says that there was irresponsible financial and educational planning that mislead financial resource managers, wasted funds and depreciated the reputation of your constituency. The risk for foundations investing in independent education has been heightened.

Second, a visit of a development officer to a foundation can be useful or it can be a disaster. To avoid the latter, your development officer should be totally read-in on your school – its purposes, strengths, and weaknesses. He should understand the foundation and should avoid forcing an unnatural bridge between applicant and resource. He never should substitute himself for the faculty person directly involved. If your development officer does not have your absolute confidence, keep him on your campus.

Third, almost every mail delivery brings to my desk an elaborate and expensive submission that has little relation to our program. This is wasteful and should be avoided. A simple straightforward inquiry creates a favorable impression of the potential applicant rather than the contrary.

Fourth, the relationship of the operating budget to tuition income is most interesting. Does tuition and endowment income cover operating costs or is there an annual scramble to cover a deficit?

From my observation post I worry about a one-year graduate tuition for an H.B. Earhart Fellow at a public institution being $119.80 and at an independent university being $3,600.

I also worry over the dropping "yield ratio" on admissions (42% to 36% at Lehigh in one year) as more students go to public institutions or to those with the most financial aid.

I view with greatest favor the charging of full cost tuition with fund-raising devoted to providing capital, physical plant, and primarily loans and scholarships. When our foundation provides a tuition payment for graduate study, I see no reason for our fellow to be subsidized by alumni, "big-givers" of taxpayers. Until all tuition, public and private, is full-cost with companion programs to finance the worthy and needy, your institution can never meet the economic competition.

Fifth, any foundation manager who has survived the money and capital markets of the "Watergate Era" is sensitive to the financial management of an institution. Has the budget been balanced? How has it been balanced? Has corpus been prudently invested with use of the best advice possible? Were capital gains spent or has corpus been kept intact? Would I as a foundation trustee have a better opinion of your fiduciary capability than of my own so that I feel comfortable in transferring a piece of our resources to you for management?

Sixth, what is your relative emphasis on teaching and publication in selecting, promoting and retaining faculty? Would it be possible for Christian Gauss to be promoted tomorrow to a full professorship on your campus? I view with dismay the flood of paper emerging from academe so faculty can avoid "perishing" rather than advance knowledge. Somewhere I noted that in two decades the number of journals has gone from 66,000 to 250,000. In modern languages it has been from 29 to 216. One wag estimated a journal article is read by seven sturdy souls, one of whom is the author. I decry my own organization's contribution to the crisis in scholarly publishing because of the requirements of the Tax Reform Act in permitting grants to individuals. Each such grant must result in a report, a publication.

Is the student your "customer" or is a journal, an editorial board, a professional organization, a consulting arrangement more important?

Corollary to the foregoing is your willingness to avoid the rigidities of the tenure system by seeking more rational and varying contractual arrangements, assuming, of course, a reputation on your campus for the free flow of inquiry and expression.

Seventh, when you take aboard a special program, usually termed a center or an institute, is it part of and contributory to the regular instructional program? Have you first made sure that your regular program is solid, balanced, well staffed and adequately financed? Do you avoid an over-emphasis and an over-enthusiastic pitch designed to attract funds and publicity, but to do little for classroom, laboratory and library learning?

Eighth, avoid at your institution the inflation of claims that knowledge can solve all our problems – the trap that caught "the brightest and the best." Be aware of the fact, states Robert Nesbit, that scientists and scholars as public policy makers cease to be men of learning. He also warns against the practice of grantsmanship leading to use of the campus for the staging of expensive, complex and powerful research organizations that are bureaucratic and sometimes corrupt. The search for truth is a search by responsible, free individual scholars.

Ninth, there are other elements we of the foundation world seek out in an appraisal of your institution. I will list some of them: degree of financial support from trustees and from alumni; library holdings and student usage of the library; the existence of a weekend student suitcase brigade; relationships between administration and faculty, including administrative staff participation in teaching; self-studies and evaluation methods with the extent of the follow-through; campus maintenance, extent and use of soft money, etc. Each of these could be illustrated as to how they encouraged foundation support or turned it off.

Tenth, I would be less than human if I did not also look for some concern on your part over the health of the independent sector, over the special burdens for example that private foundations carry as distinguished from public foundations and educational institutions. If private foundations can be viewed with suspect, can be singled out for special treatment – an excise tax, payout requirements, special reporting, investment controls, etc.,– then when is it your turn to be regarded as other than virtuous? I hold that we of the non-tax-supported world must stick together.

In bringing this catalogue of random ruminations and personal peeves to conclusion, I return to the issue of institutional individuality and distinctiveness. Maintenance of such characteristics – of a diversity in education – is your reason for being. When I note in my records such institutions as Berea, Blacksburg, Brigham Young, Carleton, Claremont, Chicago, Dallas, Harvard, Kenyon, New School, Rockford, Roosevelt, St. John's and Yeshiva you all recognize these names as representing something distinctive and excellent. Of course there are others.

Two recent clippings further illustrate my emphasis.

On 23 September a WALL STREET JOURNAL editorial said: "Western Maryland College recently agreed to remove the croses from its chapels and to limit the number of Methodists on its board and faculty. In addition, the Associated Press reports, it agreed 'neither to sponsor nor conduct any religious services,' to 'remain totally neutral to the spiritual development in a religious sense of its students,' and not to include prayers, religious hymns or sermons in its graduation exercises."

Western Maryland agreed to these conditions to continue receiving state funds and I do not disagree with such conditions when tax funds are used. I do submit that this school has given up its distinctiveness, probably its effectiveness, and any claim for support from non-public funds.

The second story is from a university's house organ in which Professor Woodrow Wilson in 1896 records the distinctiveness of Princeton University in its early life. He elaborated by saying that this nation in its first 20 years of existence got from Princeton 9 delegates to the Constitutional Convention, 13 Governors, 23 Congressmen, 20 Senators, 3 Justices of the U.S. Supreme Court, 1 Vice President, 1 President.

This is a remarkable record. I need say no more.

R.H. Coase

Professor R.H. Coase was born in 1910 in London, England. He studied at the London School of Economics from which he graduated in 1931. After holding positions at the Dundee School of Economics and the University of Liverpool, he joined the faculty of the London School of Economics in 1935. He continued at the London School of Economics and was appointed Reader in Economics with special reference to Public Utilities in 1947. In 1951 Professor Coase migrated to the United States and has held positions at the Universities of Buffalo, Virginia and Chicago. He is the Clifton R. Musser Professor of Economics in the University of Chicago Law School. He is also editor of the JOURNAL OF LAW AND ECONOMICS.

The Market for Goods and The Market for Ideas

by R.H. Coase

University of Chicago Law School

The normal treatment of governmental regulation of markets makes a sharp distinction between the ordinary market for goods and services and the activities covered by the First Amendment – speech, writing, and the exercise of religious beliefs – which I call, for brevity, "the market for ideas." The phrase, "the market for ideas," does not describe the boundaries of the area to which the First Amendment has been applied very exactly. Indeed, these boundaries do not seem to have been very clearly drawn. But there can be little doubt that the market for ideas, the expression of opinion in speech and writing and similar activities, is at the center of the activities protected by the First Amendment, and it is with these activities that discussion of the First Amendment has been largely concerned.

The arguments that I will be considering long antedate the passage of the First Amendment (which obviously incorporated views already held) and there is some danger for economists, although not necessarily for American lawyers, in confining our discussion to the First Amendment rather than considering the general problem of which it is a part. The danger is that our discussion will tend to concentrate on American court opinions, and particularly those of the Supreme Court, and that, as a result, we will be led to adopt the approach to the regulation of markets found congenial by the courts rather than one developed by economists, a procedure which already has gone a long way to ruin public utility economics and has done much harm to economic

discussion of monopoly problems generally. This approach is confining in another way, since by concentrating on issues within the context of the American Constitution, it is made more difficult to draw on the experience and thought of the rest of the world.

What is the general view that I will be examining? It is that, in the market for goods, government regulation is desirable whereas, in the market for ideas, government regulation is undesirable and should be strictly limited. In the market for goods, the government is commonly regarded as competent to regulate and properly motivated. Consumers lack the ability to make the appropriate choices. Producers often exercise monopolistic power and, in any case, without some form of government intervention, would not act in a way which promotes the public interest. In the market for ideas, the position is very different. The government, if it attempted to regulate, would be inefficient and its motives would, in general, be bad, so that, even if it were successful in achieving what it wanted to accomplish, the results would be undesirable. Consumers, on the other hand, if left free, exercise a fine discrimination in choosing between the alternative views placed before them, while producers, whether economically powerful or weak, who are found to be so unscrupulous in their behavior in other markets, can be trusted to act in the public interest, whether they publish or work for the *New York Times*, the *Chicago Tribune* or the Columbia Broadcasting System. Politicians, whose actions sometimes pain us, are in their utterances beyond reproach. It is an odd feature of this attitude that commercial advertising, which is often merely an expression of opinion and might, therefore, be thought to be protected by the First Amendment, is considered to be part of the market for goods. The result is that government action is regarded as desirable to regulate (or even suppress) the expression of an opinion in an advertisement which, if expressed in a book or article, would be completely beyond the reach of government regulation.

This ambivalence toward the role of government in the market for goods and the market for ideas has not usually been attacked except by those on the extreme right or left, that is, by fascists or communists. The Western world, by and large, accepts the distinction and the policy recommendations that go with it. The peculiarity of the situation has not, however, gone unnoticed, and I would like to draw your attention to a powerful article by Aaron Director. Director quotes a very strong statement by Justice William O. Douglas in a Supreme Court opinion, a statement which is no doubt intended as an interpretation of the First Amendment, but which obviously embodies a point of view not dependent on constitutional considerations. Justice Douglas said: "free speech, free press, free exercise of religion are placed separate and apart; they are above and beyond the police power; they are not subject to regulation in the manner of factories, slums, apartment houses, production of oil and the like" (*Beauharnis v. Illinois*). Director remarks of the attachment to free speech that it is "the only area where *laissez-faire* is still respectable."

Why should this be so? In part, this may be due to the fact that belief in a free market in ideas does not have the same roots as belief in the value of free trade in goods. To quote Director again: "The free market as a desirable method of organizing the intellectual life of the community was urged long before it was advocated as a desirable method of organizing its economic life. The advantage of free exchange of ideas was recognized before that of the voluntary exchange of goods and services in competitive markets." In recent years, particularly, I think in America (that is, North America), this view of the peculiar status of the market for ideas has been nourished by a commitment to democracy as exemplified in the political institutions of the United States, for whose efficient working a market in ideas not subject to government regulation is considered essential. This opens a large subject on which I will avoid comment. Suffice it to say that, in practice, the results actually achieved by this particular political system suggest that there is a good deal of "market failure."

Because of the view that a free market in ideas is necessary to the maintenance of democratic institutions and, I believe, for other reasons also, intellectuals have shown a tendency to exalt the market for ideas and to depreciate the market for goods. Such an attitude seems to me unjustified. As Director said: "the bulk of mankind will for the foreseeable future have to devote a considerable fraction of their active lives to economic activity. For these people, freedom of choice as owners of resources in choosing within available and continually changing opportunities, areas of employment, investment, and consumption is fully as important as freedom of discussion and participation in government." I have no doubt that this is right. For most people in most countries (and perhaps in all countries), the provision of food, clothing, and shelter is a good deal more important than the provision of the "right ideas," even if it is assumed that we know what they are.

But leave aside the question of the relative importance of the two markets; the difference in view about the role of government in these two markets is really quite extraordinary and demands an explanation. It is not enough merely to say that the government should be excluded from a sphere of activity because it is vital to the functioning of our society. Even in markets which are mainly of concern to the lower orders, it would not seem desirable to reduce the efficiency with which they work. The paradox is that government intervention which is so harmful in the one sphere becomes beneficial in the other. The paradox is made even more striking when we note that at the present time it is usually those who press most strongly for an extension of government regulation in other markets who are most anxious for a vigorous enforcement of the First Amendment prohibitions on government regulation in the market for ideas.

What is the explanation for the paradox? Director's gentle nature does not allow him to do more than hint at it: "A superficial explanation for the preference for free speech among intellectuals runs in terms of vertical interests. Everyone tends to magnify the importance of his own occupation and to minimize that of his neighbor. Intellectuals are engaged in the pursuit of truth, while others are merely engaged in earning a livelihood. One follows a profession, usually a learned one, while the other follows a trade or a business." I would put the point more bluntly. The market for ideas is the market in which the intellectual conducts his trade. The explanation of the paradox is self-interest and self-esteem. Self-esteem leads the intellectuals to magnify the importance of their own market. That others should be regulated seems natural, particularly as many of the intellectuals see themselves as doing the regulating. But self-interest combines with self-esteem to ensure that, while

others are regulated, regulation should not apply to them. And so it is possible to live with these contradictory views about the role of government in these two markets. It is the conclusion that matters. It may not be a nice explanation, but I can think of no other for this strange situation.

That this is the main explanation for the dominance of the view that the market for ideas is sacrosanct is certainly supported if we examine the actions of the press. The press is, of course, the most stalwart defender of the doctrine of freedom of the press, an act of public service to the performance of which it has been led, as it were, by an invisible hand. If we examine the actions and views of the press, they are consistent in only one respect: they are always consistent with the self-interest of the press. Consider their argument that the press should not be forced to reveal the sources of its published material. This is termed a defense of the public's right to know – which is interpreted to mean that the public has no right to know the source of material published by the press. To desire to know the source of a story is not idle curiosity. It is difficult to know how much credence to give to information or to check on its accuracy if one is ignorant of the source. The academic tradition, in which one discloses to the greatest extent possible the sources on which one relies and thus exposes them to the scrutiny of one's colleagues, seems to me to be sound and an essential element in the search for truth. Of course, the counterargument of the press is not without validity. It is argued that some people would not express their opinions honestly if it became known that they really held these opinions. But this argument applies equally to all expressions of views, whether in government, business, or private life, where confidentiality is necessary for frankness. However, this consideration has commonly not deterred the press from revealing such confidences when it was in their interest to do so. Of course, it would also impede the flow of information to reveal the sources of the material published in cases in which the transmission of the information involved a breach of trust or even the stealing of documents. To accept material in such circumstances is not consistent with the high moral standards and scrupulous observance of the law which the press expects of others. It is hard for me to believe that the main thing wrong with the Watergate affair was that it was not organized by the *New York Times*. I would not wish to argue that there are not conflicting considerations in all these cases which are difficult to evaluate. My point is that the press does not find them difficult to evaluate.

Consider another example which is in many ways more striking: the attitude of the press to government regulation of broadcasting. Broadcasting is an important source of news and information; it comes within the purview of the First Amendment. Yet the program content of a broadcasting station is subject to government regulation. One might have thought that the press, devoted to the strict enforcement of the First Amendment, would have been constantly attacking this abridgment of the right of free speech and expression. But, in fact, they have not. In the forty-five years which have passed since the formation of the Federal Radio Commission (now transformed into the Federal Communications Commission), very few doubts about the policy have been expressed in the press. The press, which is so anxious to remain unshackled by government regulation, has never exerted itself to secure a similar freedom for the broadcasting industry.

Lest you think that I manifest a hostility to the American press, I would like to point out that the British press has acted in a similar fashion. In this case the contrast between actions and proclaimed beliefs is even stronger since what was established in Britain was a government-controlled monopoly of a source of news and information. It might have been thought that this affront to the doctrine of freedom of the press would have appalled the British press. It did not. They supported the broadcasting monopoly, mainly, as far as I can see, because they saw the alternative to the British Broadcasting Corporation (*BBC*) as commercial broadcasting and, therefore, as involving increased competition for advertising revenue. But if the press did not want competition for advertising revenue, they also did not want increased competition in the supply of news. And so they did their best to throttle the *BBC*, at least as a purveyor of news and information. When the monopoly was originally established (when it was still the British Broadcasting *Company*), the *BBC* was prohibited from broadcasting news and information unless obtained from certain named news agencies. No news could be broadcast before 7 p.m. and broadcasts likely to affect adversely the sale of newspapers faced other restrictions as well. Gradually, over the years, these restrictions were relaxed as a result of negotiations between the press and the *BBC*. But it was not until after the outbreak of World War II that the *BBC* broadcast a regular news bulletin before 6 p.m.

But, it may be argued, the fact that businessmen are mainly influenced by pecuniary considerations is no great discovery. What else would one expect from the money-grubbers of the newspaper world? Furthermore, it may be objected, because a doctrine is propagated by those who benefit from it does not mean that the doctrine is unsound. After all, have not free speech and a free press also been advocated by high-minded scholars whose beliefs are determined by what is true rather than by more sordid considerations? There has surely never been a more high-minded scholar than John Milton. As his *Areopagitica* "for the liberty of unlicensed printing" is probably the most celebrated defense of the doctrine of freedom of the press ever written, it seemed to me that it would be worthwhile to examine the nature of his argument for a free press. Milton's work has another advantage for my purpose. Written in 1644, that is, long before 1776, we can see the character of the argument before there was any general understanding of how competitive markets worked and before the emergence of modern views on democracy.

It would be idle for me to pretend that I could act as a guide to Milton's thought. I know too little of seventeenth century England and there is much in Milton's pamphlet the meaning of which I cannot discern. Yet, there are passages which leap across the centuries and for whose interpretation no scholarship is needed.

As one would expect, Milton asserts the primacy of the market for ideas: "Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties" (p. 44). It is different from the market for goods and should not be treated in the same way: "Truth and understanding are not such wares as to be monopolised and traded in by tickets and statutes and standards. We must not think to make a staple commodity of all the knowledge in the land, to mark and license it like our broadcloth and our woolpacks" (p. 29). The licensing of printed material is an affront to

learned men and to learning: "When a man writes to the world, he summons up all his reason and deliberation to assist him; he searches, meditates, is industrious, and likely consults and confers with his judicious friends; after all which done he takes himself to be informed in what he writes, as well as any that writ before him. If in this the most consummate act of his fidelity and ripeness no years, no industry, no former proof of his abilities can bring him to that state of maturity as not to be still mistrusted and suspected, unless he carry his considerate diligence, all his midnight watchings . . . to the hasty view of an unleisured licenser, perhaps much his younger, perhaps far his inferior in judgment, perhaps one who never knew the labour of book-writing, and, if he be not repulsed or slighted, must appear in print like a puny with his guardian and his censor's hand on the back of his title to be his bail and surety, that he is no idiot or seducer, it cannot be but a dishonour and derogation to the author, to the book, to the privilege and dignity of learning" (p. 27). Licensing is also an affront to the common people: "Nor is it to the common people less than a reproach; for if we be so jealous over them, as that we dare not trust them with an English pamphlet, what do we but censure them for a giddy, vicious, and ungrounded people, in such a sick and weak state of faith and discretion, as to be able to take nothing down but through the pipe of a licenser" (p. 30). In the market for ideas, the right choices are made: "Let (truth) and falsehood grapple; who ever knew Truth put to the worse in a free and open encounter" (p. 45). Those who undertake the job of licensing will be incompetent. A licenser should be, according to Milton, "Studious, learned, and judicious." But this is not what we are likely to get: "we may easily foresee what kind of licensers we are to expect hereafter: either ignorant, imperious, and remiss, or basely pecuniary" (p. 25). The licensers are more likely to suppress truth than falsehood: "if it come to prohibiting, there is aught more likely to be prohibited than truth itself; whose first appearance to our eyes bleared and dimmed with prejudice and custom is more unsightly and unplausible than many errors . . ." (p. 47). Nor does Milton fail to tell us that the licensing scheme against which he was writing came about as a result of industry pressure: "And how it got the upper hand . . . there was in it the fraud of some old patentees and monopolisers in the trade of book-selling" (p. 50).

In the formation of Milton's views, self-interest may perhaps have played a part, but there can be little doubt that his argument embodies a good deal of intellectual pride of the kind to which Director refers. The writer is a learned man, diligent and trustworthy. The licenser would be ignorant, incompetent, and basely motivated, perhaps "younger" and "inferior in judgment." The common man always chooses truth as against falsehood. The picture is a little too one-sided to be wholly convincing. And if it has been convincing to the intellectual community (and apparently it often has), it is surely because people are easily persuaded that what is good for them is good for the country.

I do not believe that this distinction between the market for goods and the market for ideas is valid. There is no fundamental difference between these two markets and, in deciding on public policy with regard to them, we need to take into account the same considerations. In all markets, producers have some reasons for being honest and some for being dishonest; consumers have some information but are not fully informed or even able to digest the information they have; regulators commonly wish to do a good job, and though often incompetent and subject to the influence of special interests, they act like this because, like all of us, they are human beings whose strongest motives are not the highest.

When I say that the same considerations should be taken into account, I do not mean that public policy should be the same in all markets. The special characteristics of each market lead to the same factors having different weights, and the appropriate social arrangements will vary accordingly. It may not be sensible to have the same legal arrangements governing the supply of soap, housing, automobiles, oil, and books. My argument is that we should use the same *approach* for all markets when deciding on public policy. In fact, if we do this and use for the market for ideas the same approach which has commended itself to economists for the market for goods, it is apparent that the case for government intervention in the market for ideas is much stronger than it is, in general, in the market for goods. For example, economists usually call for government intervention, which may include direct government regulation, when the market does not operate properly – when, that is, there exist what are commonly referred to as neighborhood or spillover effects, or, to use that unfortunate word, "externalities." If we try to imagine the property rights system that would be required and the transactions that would have to be carried out to assure that anyone who propagated an idea or a proposal for reform received the value of the good it produced or had to pay compensation for the harm that resulted, it is easy to see that in practice there is likely to be a good deal of "market failure." Situations of this kind usually lead economists to call for extensive government intervention.

Or consider the question of consumer ignorance which is commonly thought to be a justification for government intervention. It is hard to believe that the general public is in a better position to evaluate competing views on economic and social policy than to choose between different kinds of food. Yet there is support for regulation in the one case but not in the other. Or consider the question of preventing fraud, for which government intervention is commonly advocated. It would be difficult to deny that newspaper articles and the speeches of politicians contain a large number of false and misleading statements – indeed, sometimes they seem to consist of little else. Government action to control false and misleading advertising is considered highly desirable. Yet a proposal to set up a Federal Press Commission or a Federal Political Commission modeled on the Federal Trade Commission would be dismissed out of hand.

The strong support enjoyed by the First Amendment should not hide from us that there is, in fact, a good deal of government intervention in the market for ideas. I have mentioned broadcasting. But there is also the case of education, which, although it plays a crucial role in the market for ideas, is subject to considerable regulation. One might have thought that those who were so anxious to obstruct government regulation of books and other printed material would also find such regulation in the field of education obnoxious. But, of course, there is a difference. Government regulation of education commonly accompanies government financing and other measures (such as compulsory school attendance) which increase the demand for the services of intellectuals and, therefore, their incomes. (See E.G. West, p. 101.) So self-interest, which, in general, would lead to support for a free market in ideas.

suggests a different attitude in education.

Nor do I doubt that detailed study would reveal other cases in which groups of practitioners in the market for ideas have supported government regulation and the restriction of competition when it would increase their incomes, just as we find similar behavior in the market for goods. But interest in monopolizing is likely to be less in the market for ideas. A general policy of regulation, by restricting the market, would have the effect of reducing the demand for the services of intellectuals. But more important, perhaps, is that the public is commonly more interested in the struggle between truth and falsehood than it is in the truth itself. Demand for the services of the writer and speechmaker depends, to a considerable extent, on the existence of controversy – and for controversy to exist, it is necessary that truth should not stand triumphant and alone.

Whatever one may think of the motives which have led to the general acceptance of the present position, there remains the question of which policies would be, in fact, the most appropriate. This requires us to come to some conclusion about how the government will perform whatever functions are assigned to it. I do not believe that we will be able to form a judgment in which we can have any confidence unless we abandon the present ambivalence about the performance of government in the two markets and adopt a more consistent view. We have to decide whether the government is as incompetent as is generally assumed in the market for ideas, in which case we would want to decrease government intervention in the market for goods, or whether it is as efficient as it is generally assumed to be in the market for goods, in which case we would want to increase government regulation in the market for ideas. Of course, one could adopt an intermediate position – a government neither as incompetent and base as assumed in the one market nor as efficient and virtuous as assumed in the other. In this case, we ought to reduce the amount of government regulation in the market for goods and might want to increase government intervention in the market for ideas. I look forward to learning which of these alternative views will be espoused by my colleagues in the economics profession.

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Higher Education and Morality

by Sidney Hook

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It is tempting to say that when a community becomes concerned about the morality of its citizens, it betokens either a breakdown in acceptable habits of moral behavior or a new moral awakening. The temptation should be resisted because it doesn't seem to be true. The breakdown can't be complete if the concern is acute: and the new moral awakening has yet to go beyond the expression of concern. As one whose memories of public life go back more than half a century – I became an avid reader of the press when I first became a newsboy – I can testify that there has never been a time in the 20th century when the moral situation of the nation has not been in crisis. The state of public morality has always been deplored, and in the minds of many, therefore deplorable. And if by public morality we mean political morality, those of us who served as watchers on election day for minority parties in New York can bear witness to chronic and wholesale violations of the sacred rights of voters.

Nonetheless, despite the periodical crises in public morality, I cannot recall at any time in my half century of academic life so much concern with the state of morality on the *campuses* of higher education. I am not referring so much to the recurrent plague of cheating and the phasing out of honor systems – that were

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honored more in the breach than in the observance. I am referring to the increase in theft, vandalism and violence, the callous disregard of the freedom to teach and learn among students and the decline in standards of professional responsibility among some of their teachers. There is a striking paradox about this phenomenon which has been noted on several occasions. The last decade has been marked by an intense, heightened consciousness among students of the problems of social morality, by a concern for the rights and welfare of minorities, women and the alleged victims of "American imperialism" anywhere. Yet, on campuses where this growth of social consciousness has occurred, bookstores and libraries have been "ripped off", and the traditional principles of personal morality – respect for persons and property, conscientiousness, the obligation to avoid free loading – all dismissed as middle-class bourgeois values, or when regarded at all, considered like the work-ethic, as an unavoidable and hopefully temporary price for admission to some professional school and career.

Because of the revelations of Watergate and the role played by lawyers in that unedifying spectacle, higher education in some quarters has come under criticism for its failure to impart proper moral instruction with its professional training. But, if there is some connection between the state of *public* morality and what the universities and professional schools have done or failed to do, surely it was just as true in the pre-Watergate past. After all, whatever the character of the Watergate violation, its moral turpitude was not unprecedented in our political annals. It was merely on a greater scale, and better known. Lest I be misunderstood, let me say at once that I do not regard it in the least as an extenuation of the political immorality of the Watergate culprits that practices which suborn the democratic political process have been widely engaged in before. There was never any reason why they should have been tolerated in the past, and it does not lessen the moral guilt of those guilty of such practices in more recent times. Indeed, I for one regard the degree and intensity of the still current public adverse reaction against those involved in Watergate and allied abuses as a heartening phenomenon. May it long endure. But it would be extremely naive to pretend to surprise at its occurrence. To me, its egregious stupidity was far more shocking than its rascality. I recall asking a close and trusted advisor of President-elect John Kennedy in 1960 whether it was true that Jake Arvey's machine stole the election in Cook County, Illinois, thus insuring Kennedy's victory in the state and nation. His cool and cheerful response was: "In all probability the count was crooked in Cook County." But he added, "It is also true that the Republican machine probably stole enough votes down state to even the score."

My point is that our problems are older and graver than Watergate, and that even if Watergate had never occurred or never had been discovered, we would still be confronted by them – inflation and economic uncertainty, the spread of violence, the danger of a nuclear holocaust and the decline in personal and professional morality. The specific evils associated with Watergate may in the future be obviated by extending and limiting the Presidential office to one term of six years or by following the English example in curbing outlays for elections. But there are no easy devices to cure the ailments of the body politic of which Watergate is one gross expression. For that ailment, I shall contend, flows from a failure effectively to teach, understand and follow the ethics and logic of the democratic political process, an educational failure that can hardly be remedied on the level of higher education.

The understanding and the commitment to the democratic process is fundamentally an educational task in its broadest sense. This means that the task is not restricted to the schools which are only the formal transmitters of knowledge, skills and values but encompasses the home, the street, the workshop, houses of worship, and especially the public media. The schools alone cannot do what the rest of society opposes or ignores but they do have a special strategic role when we consider the years of schooling – including now universal access to higher education – which the United States provides. With respect to the schools, the recent history of campus violence, and even the present climate of opinion with the attendant practices of intolerances of views considered objectionable by any militant minority, indicates that despite all the courses in civics, citizenship and political science, despite all the holiday rhetoric, the American educational system has failed to develop among those entrusted to it, a dedication to democratic institutions, and a realization of the values which the successful functioning of democracy presupposes.

I repeat: let us recognize that whatever proper schooling is able to achieve in the way of desirable moral and political education, by itself it will not be enough. Unless the institutional practices of society reflect the same desirable values, the same commitment to the democratic process, the profession of allegiance to it will sound hollow. We may even go so far as to say that when a society in crisis turns to its schools and schooling for leadership and vision, it is legitimate to ask why they were not more influential before the crisis broke.

Nonetheless admitting that the school system cannot do much by itself, and that the intensity of the crisis is not likely to be abated by any sudden curricular transformation or revolution, schooling, including all the agencies of adult education, *can do something* at least in the way of clarifying what the ethical standards of society are, where they fall short of what they should be, and what modes of thought and conduct account for the disparity. That is why the field of education, although not the exclusive, is the most important area for activity.

To begin with we must recognize that the old ethical absolutism is gone, and that many of the traditional practices, customs, and conventions which could be justified from the moral point of view in the past, can no longer be sustained in the light of advances in human knowledge of nature, society, and human nature. But what has replaced the old absolutism in many quarters is a new form of absolutism which under the slogans of moral autonomy and independence has developed into a kind of generalized permissiveness in which individuals claim that they are free to decide for themselves what is right or wrong without any appeal to rules, principles or ideals. Grant that all genuine morality is autonomous. The important question here is how one decides, and with reference to what? Does one decide after a reflective examination of alternative courses of action and their consequences or does one decide on the basis of impulse or unmediated desire? Does one decide with exclusive reference to one's own interest or with reference to the interests of others affected by one's decisions? The influential forms of permissiveness today seem to assume that because moral rules, principles, or ideals have exceptions and do not possess an absolutely categorical character, that therefore, there are no moral rules, principles or ideals. They thereby

overlook that when a legitimate exception is made to a moral rule, this does not destroy its binding character, but recognizes the overriding obligation of another rule or principle.

Another way of saying this is that historical and ethical relativity of moral practices and judgments does not entail the fashionable views of moral subjectivism, the notion that anything is right that thinking or wishing or desiring regards as right. Because the nutritive value of food is always relative to an organism, because one person's nourishment may be another's allergy or poison, it does not follow that there are no objective rules or principles of nutrition. Shrimp is nutritious to Organism "O," it may be poisonous to Organism "Ó" but the principles of nutrition are the same in both cases. We must not confuse the concept of objectivity and universality. The recognition of objective relativism, that what is right under some circumstances for x to do may be wrong under different circumstances, does not by any means justify the moral nihilism of the Smerdyakov's of this world that "all things are permissible." A morality that is relevant to man is one that is relevant to his existing nature and to the reflective choice he makes about what he wishes to become within the range of possible developments of that nature. The cardinal principle of humanism is that it is only intelligence or reason, not revelation, private intuition or personal wish, that can determine what man's nature is, what the effects of our choices on its fulfillment or frustration are, and the range of its possible development. To borrow the language of traditional religion: This is the Law of the Prophets. Everything else is commentary.

There are inescapable differences among human beings concerning the nature of the good or better in specific circumstances – individual and social. Conflicts among men and women are inescapable but if life consisted only of conflict we could hardly account for the survival of man, of the shared experiences that make possible a common life. Hobbes' war of all against all is not the original condition of man but a consequence of the breakdown of social order. Men and women are born into societies. They do not create societies to lessen fear of sudden death. That fear is socially acquired when the cement of social life is eroded. For all the differences among cultures let us not ignore the transcultural value-invariants that exist – the judgments that health, knowledge, vision, truthfulness, sincerity, kindness, loyalty, friendship are morally preferable to their opposites in almost all societies.

The moral situation is one that is defined not by the simple conflict of good and bad, right or wrong, but as John Dewey has observed, by the conflict between good and good, right and right, and the good and the right. This is true not only in individual situations – when I must choose between being loyal or kind or telling the truth (e.g. a teacher to a dull aspiring student or a physician to a patient with a hopeless cancer or a lawyer asked about his client's affairs) – but in public or social situations (e.g. when national security may genuinely conflict with the so-called right to know, or when a man's right to a fair trial is threatened by the freedom of the press). It is in these conflicts that the poignancy of the moral choice always lies, and no mere rehearsal of the moral virtues to which we all subscribe enables us to resolve the conflicts among them.

What can resolve this conflict? Briefly, the factor which seems so strikingly absent in the moral posturing and lamentations of recent days, viz., intelligence. The life of intelligence consists in exploring the effects of alternative resolutions on the entire structure of moral goods, in one class of cases, and the structure of civil rights and liberties, in the order. It is the failure to use all the resources of intelligence which seems to me to account for the emergence of a new fanaticism and absolutism, and the allied view that some one desirable end, whether it be peace or freedom or national security, justifies the use of any and all means to achieve it. I shall argue that on the contrary, it is the failure to appreciate the *interrelation of ends and means*, to understand that what results in the future is always the consequences of the means used in the present, that is the root of the evils of society.

The new fanaticism and moral absolutism of our time takes the form of the glorification of "conscience" as the supreme authority in the resolution of moral dilemmas. It is enunciated with a self-righteousness and intolerance that regard criticism of the content and manner of its views as moral wickedness. It was typified in the actions of some extremists opponents of the Viet Nam war, and especially in the justification of the reactions offered by leading apologists for those involved. Just a year or two ago in a court room in Madison, Wisconsin, a former student was tried for the murder of a scientist killed in consequence of the bombing of the Mathematics Research Center. In a pre-sentencing session which lasted two entire weeks and which an intellectually feeble and psychologically intimidated Judge permitted to be turned into a packed, one sided political rally, a series of witnesses were not content to plead for mitigation of the sentence for the accused, whose guilt was plain, but justified his action. Former U.S. Senator Gruening called all acts of resistance to the Vietnam war, and I quote, "fully justified in whatever form they take." Professor Falk of Princeton University asserted that private American citizens had a " 'right, and perhaps a duty' to actively oppose the war by any means." (N.Y. *Times*, October 20, 1973).

Let us reflect for a moment. To say that acts of resistance to a policy of a legally constituted democratic government are fully justified *whatever form they take*, that citizens have a duty to actively oppose this policy by *any means* is to say that assassination, arson, mass murder that serves this purpose are all legitimate. It is an incitement not only to violence but to unspeakable atrocity. It goes beyond the extremist claims of any spokesman for civil disobedience, for by definition it is not civil. It sets up an individual's conscience above the law, not only above the law of an absolute tyranny or totalitarian state but above the law of a democratic society whose mechanisms permit the remedy of abuses or errors by peaceful means.

These legally and morally irresponsible sentiments are sanctified by the invocation of "conscience", for no reflective justification of the use of *any* means, regardless of consequences, to achieve an end is possible. But to invoke conscience in this way is not only the height of arrogance, it is self-defeating. For if the apologists of the bombing at Madison could justify murder in a "good cause," then the grieving and stricken dependents of the murdered man or the zealous patriots who feel outraged at this overt collaboration with the enemies of our country, would feel morally justified in murdering them. The supremacy of conscience in a world where consciences differ about all sorts of things means the abdication of law, an invitation to anarchy, and the ultimate emergence of despotism.

Indeed, where did we hear something like the view we are criticizing expressed not so long ago? Why, from among those whom these self-righteous defendants of murder would be the first to condemn, viz., among the Watergate defendants. Did we not hear some of the latter say that they acted for what *their* conscience told them was the good of the country? This was the explanation that Hunt gave for his behavior in a television interview. Did not some of the Cubans involved say that they thought they were helping the U.S. to stave off a Castro-like fate for the future? Did not others express their outraged fear of a hapless McGovern on his knees before Hanoi? Some of them pleaded that they did not act out of personal gain, that unlike the conscience driven zealots of the New Left, they took no human life. Indeed they introduced character witnesses to testify that in their personal lives they were models of conventional ethical deportment. Perhaps the most startling expression in its frankness, combined with an air of moral hauteur, was the declaration of Gordon Liddy who broke his silence in his interview with Mike Wallace. He justified both his actions and refusal to plead explicitly on the ground that the end justifies the use of any means necessary to achieve it.

What answer do we make to these Watergate defendants? Why, that the wound they inflicted on the body and spirit of the democratic process, even if some of their political critics are just as guilty, is morally graver than the personal crimes of others, although legally not as punishable, because in the long run it undermines the validity of the democratic process, and may result ultimately in personal evils of great magnitude. What I find puzzling is that this answer which the polls show reflects the majority opinion of the American people, is not heard when other conscience-invoking criminal law-makers are involved. There is a double standard of political and social morality at work here. Otherwise how explain the thundering silence of the public media with respect to the apologies for bloodshed and worse heard in the Wisconsin courtroom?

What is wrong both in the behavior and apologias of the Watergate defendants and of the New Left extremists and of all groups like the I.R.A. or P.L.O. who feel absolved by their good intentions and their good causes when resorting to any means to further their goal, is the tendency to treat opponents within the democratic process as if they were enemies of the democratic process. Measures that may sometimes be legitimate, morally and legally, in times of clear and present danger, to the survival of democracy or the security of the nation must never be employed against fellow citizens with whom we differ about political ends or means. Even when we are defending ourselves against our enemies, we must not blind ourselves to the human being within the enemy. In tragic situations where we must choose between lesser evils, as when we must take a life to save other lives, we must recognize evil as evil.

What is wrong with the view that any means is justified to achieve some holy or sanctifying end proclaimed by our conscience is the simple fact that the use of means determines the resultant ends; that the means are in a sense part of the ends, and therefore might possibly result in consequences quite different from the ends-in-view from which we start. It is not the shining words with which we clothe our ideal ends that determine the shape of the future but the deeds of our hands, the effects of the instruments employed. Were that lesson properly learned we would not speak of the supremacy of conscience or good intentions or high ideals in moral and political life but of the supremacy of method, of intelligence, of experiment, and reason. What is even more important, were we *to act* on that lesson, we would be spared most of the abuses of democratic political life.

Our moral economy consists of plural values or ends. If we take one of them – whatever it be – and make it the all-sanctifying end and say that it justifies the use of any means, then we are committing ourselves to a course of conduct whose consequences may destroy other values as dear and important to any man as the end in question. This is the logic of fanaticism. The truth is that since most of our basic values are interconnected, once we destroy by the unintended consquences of our action these other values, the end itself, in behalf of which we have sacrificed the other values, becomes rank and unsatisfactory.

This raises the question of the specific role of the university in moral and political education. First of all let me indicate what I believe the university cannot and should not attempt to do. It cannot change moral attitudes by didactic instruction, by lecturing or hectoring adult men or women whose moral attitudes and character were largely fixed by other educational agencies long before they appeared on the university scene. Such students cannot be improved by offering courses in Elementary Virtue, Intermediate Virtue or Advanced Virtue. Whatever desirable moral effects are reached, are more likely to be achieved by indirection. Secondly, the university should consider itself neither a bastion of the social and political status-quo nor an ivory tower or retreat, although it should have some ivory towers for those who wish to live in them, nor a sanctuary from which to launch hit and run raids against the community to reform or revolutionize it. The threefold mission of the University as a corporate entity is to transmit the culture of the past by teaching, to add to the store of knowledge in the broadest sense by research, and to serve the community of which it is a part and on which it depends for its support by providing opportunities to study, in an independent and authoritative fashion, the problems, conflicts and predicaments of mankind.

This means that the university as a corporate entity should be neither an apologist for the culture of the Establishment nor an exponent of the adversary or counter-culture. It should not be partisan, committed to any ideology, political or economic. It is neither capitalist nor socialist. The only issues on which it may legitimately take a stand are those integrally related to the proper performance of its three generic functions – teaching, research, and social concern. For example, when academic freedom is threatened, when measures affecting its educational curriculum are at issue, when there is danger that the study of the great social problems of the times might be frustrated or subverted, the university may and should take a position. In doing so it exercises its professional responsibility. Part of its responsibility is to safeguard the rights and freedoms of those faculty members who disagree with the corporate action. But on no other subjects involving heaven or earth may the university, as distinct from the judgments of individual faculty members exercising their private rights as citizens, proclaim, endorse, approve or disapprove any "solution" or "proposal" whatsoever.

This view is opposed not only by the revolutionary New Left and by the reactionary old Right which believe that the politicalization of the University is quite appropriate, provided it is the proper

kind of politics, but also by latter day Platonists (Hutchins et. al.) The Platonists contend that the university as a corporate body, on the basis of a coherent metaphysics, must project the ideal values and programs around which society, indeed the whole of culture, is to be revolutionized. They therefore hold that the university as an institution must go beyond the objective study and exploration of what can be done and the consequences of doing it, to a fervent advocacy of *what should be* done. This in the end makes the university a political institution, a battleground of faction, of ethnic, racial, national and class conflicts.

In times of crisis and controversy when passions run high even in the academy, it is not easy for universities to live up to their mission. The spectacle of faculty bodies in their *official* capacities pronouncing not so long ago on matters of foreign policy was extremely unedifying. In situations of this kind, which are sure to recur, administrative and educational statesmanship receives its acid test. It must not yield to coercion or threats of coercion. It must not retreat from the swirling currents of controversy to the safe ground of unconcern. Moderation should not be construed as apathy, or pusillanimity. The university should rise to the occasion by providing an example to the community of rational discourse, of professional dedication under fire of reflective concern with the problems of men and society. This concern, because of the very nature of the problems considered, must center on values and value conflicts. A basic aim of any liberal arts curriculum worthy of the name should be to make students intelligently aware of their values, and to develop their powers of reflective analysis with respect to them – the grounds, as distinct from the causes, of their value-beliefs, the ways in which they are tested, and the kinds of consequences that move us to modify or reaffirm them. We can and must preserve the distinction between fact and value but anyone who claims that any policy, at whose heart are value judgments, is valid regardless of any or all consequences of following it, and acted on that contention, would be regarded as insane. It goes without saying that value judgments enter into the clinical or practical aspects of subjects and should be stressed wherever relevant in all disciplines. For example, in courses in education the various theories of teaching, learning, organization and administration should be supplemented or rather checked by inquiries about how they are actually being carried out here and now; what the causes are of the disparities between theoretical ideals or principles and the practical fulfillment. In courses in economics and political science, unless their propositions are in some way integrated with the daily world in which people move, they have an air of unreality. In business courses or studies in the theory of business enterprise, of taxation and finance such clinical inquiries would be extremely helpful in uncovering presuppositions of value. Attention to the ethical aspects of professional practice is not only required to counteract the narrow specialization of departmentalized interest, it is essential as a test of the ethics of one's vocation. The very advances in scientific knowledge which increase man's power not only over nature but over other men, demand wise decisions. The exhortations to professional virtue to which every one subscribes are not enough. Every professional school, even large departments of nonprofessional schools, should offer seminars on the ethics of the vocations with which it is directly or indirectly concerned. Special concern should be given to codes of professional ethics and methods of improving them.

The ethical moment in education is not restricted to professional education but to all of higher education. Insofar as the university has a mission in the quest for knowledge, in the teaching of growing generations, in service to the community, its primary commitment must be to liberating the minds of those it reaches in class or without, from all dogmas and prejudices that stand in the way of new knowledge, that obstruct continued personal growth, and that obscure the recognition of new social needs. What this means concretely is that the learning of any piece of knowledge in any course should always be subordinate to the methods or rationale by what it is reached; that the advocacy of any policy should be related to the moral values, present or absent, central to the decision; that the acquisition of any skills be considered in the context of their potential uses and abuses. Once this is done then, without preaching and moralizing, the university can profoundly influence the moral dispositions of those it teaches by developing the habits of open-mindedness, respect for the dignity of fellow seekers of truth, and tolerance for their honest opinion, sensitivity to empirical evidence, and imaginative awareness of other centers of human experience.

The university as an institution in our post-industrial society is itself a growing social force, especially as universal access to higher education becomes accepted as implied by the human right to an education. How can it most effectively influence the moral experience and ethical standards of the community in which differences, conflict and turmoil are chronic, and sometimes reach fever pitch? My answer is by its constant and unwavering fidelity to what John Dewey called "the integrity of intelligence" itself. By this I mean that in the university's proper fulfillment of its supreme intellectual obligations lie its supreme moral obligations, too. The members of its faculties, pledged to the pursuit of the truth, must not only have the courage to defend reasoned conclusions against the outcries of hostile groups beyond its walls who fear that some vested interest or belief be undermined, they must also have the still greater moral courage to resist those who within the walls of the academic community itself, disrupt and subvert the traditions and practices of civilized discourse on which free inquiry depends. In the spirited exercise of their rights and duties, the teachers can inspire by example not only their students but all citizens of a free society, and provide concrete illustrations of what it means to be true to one's calling and vision. It is in furtherance of these values that the university discharges its chief social obligation, serving society without becoming its servant.

Recognizing that the university is not the only or the most important institution that plays a role in influencing the ethical standards and behavior of society, let us also acknowledge that to the extent it falls short of living up to the intellectual and moral integrity of its mission, it becomes co-responsible for the moral deficiencies of the society of which it is a part.

The upshot of my remarks is that higher education cannot instill morality in students by any course or prescription, that if the educators were more faithful to the morality of their own vocation, there would be less need to be apprehensive of the morality of those whom they teach. For in the long run the contagion of example and practice is more effective than exhortation or denunciation.

I use the word "vocation" rather than "profession" because I have always considered the life of teaching, research and

scholarship not merely as another way of earning a living but as a response to a calling. Teachers or scholars are the historical descendants of the priest, minister and rabbi. But today it is legitimate to regard him, and to expect him to respect himself, as a professional. What does it mean for the teacher and scholar to respect himself as a professional? My answer is that he is pledged never to betray his trust. John Ruskin puts this in terms that outside of a poetic context would sound too grandiloquent but it conveys a high moral commitment. The professional is someone who recognizes it as his duty "on due occasion" he says, to die rather than betray his calling. He enumerates "the due occasion" for dying for the various professions:

> The Soldier, rather than leave his post in battle;
> The Physician, rather than leave his post in plague;
> The Pastor, rather than teach falsehood;
> The Lawyer, rather than countenance injustice;

To which we may add the Teacher, rather than betray his intellectual convictions and professional trust.

If only the teacher – the university teacher and the university administrator, too, – during the last decade had given more evidence of his willingness not to die for his intellectual and moral convictions but to stand up for them, to risk something in defense of them, we would have less need today to be concerned about the state of morality in higher education.

John R. Silber

John R. Silber was appointed the seventh president of Boston University in December 1970.

A distinguished scholar, philosopher and administrator, Dr. Silber was University Professor of Arts and Letters, Professor of Philosophy, and former Dean of the college of Arts and Sciences at The University of Texas at Austin. He received a B.A. degree summa cum laude from Trinity University, San Antonio, Texas, and his M.A. and Ph.D. degrees from Yale University.

He held a Fulbright Research Grant to Germany and was recipient of a Guggenheim Research Grant for study in England. He is an associate editor of Kant-Studien. *Among his numerous publications in the areas of ethics and the philosophy of law are* The Ethical Significance of Kant's Religion; Being and Doing: A Study of Status Responsibility and Voluntary Responsibility, *and* Human Action and the Language of Volition.

The Independent Sector and the Public Interest

by John R. Silber

President, Boston University

It is my pleasure to be here tonight and have the opportunity of meeting with and talking to colleagues who face problems like those I face. It is good to be reminded occasionally that there is nothing personal in the conspiracy we face – it is directed at all of us.

It has been suggested that I should begin by reviewing the basic position that I have been trying to articulate before various state associations of independent colleges and universities.

In these speeches, I have urged several imperatives for us in the independent sector. First, we should cease to call ourselves private colleges and universities. We are public institutions in the service of the public. We may be independently-owned and privately-supported, but all institutions of higher education, whether state-owned or independently-owned, educate the public and nothing else. It is a mistake for us to concede the game by allowing the state-owned sector to preempt the entire domain of public higher education. When we let them, it is then natural for Congress to ask "Why should the government subsidize the activities of private institutions with public funds?" There is no easy answer to that question as long as we call ourselves private. By doing so we set up an unnecessary rhetorical hurdle that we must clear before there can be any discussion of the basic issues. It is very important, then, that by our own usage we help the public recognize that this country has only one system of public higher education with two sectors – a state-owned sector and an independently-owned sector. The linguistic reform required is not extensive; it doesn't take very much effort to get used to it. But it is suicidal to continue to act as if it were relatively unimportant. Many of the leaders at One Dupont Circle appear to think that it is a trivial point. I think that we in the independent sector might get together on this issue and urge strongly that these various organizations – of which we are dues-paying members – rectify their terminology.

Another point that I have been urging is a need to distinguish between cost and price. The distinction is fundamental. We make a very serious mistake when we allow anyone from the state sector to claim that the state sector has a lower cost for education. It is only the price

that is low in the state sector. And why shouldn't it be? The state price is subsidized by the taxpayer and is artificially low: it may even approach the limiting condition when, at CUNY, it reaches zero. But the cost is not made low because the price is low. We should not ourselves do anything to perpetuate this confusion.

I have also been arguing that we should not allow any special group of institutions to present the case for independent higher education by suggesting that all Independent institutions face a financial crisis. They do not. Thirty-five of the 1500 independent colleges and universities have 60% of all the endowment in the independent sector. The remainder have 40% of the endowment. Harvard has $52,000 endowment per student; Wellesley, about $60,000 endowment per student; Amherst has $54,000 per student; Chicago has $31,500 endowment per student. What the administrators in these schools call problems we at Boston University call solutions. Harvard and Yale may have management problems, but they cannot have financial problems.

We weaken our case by letting it be thought that we are all in trouble, because the foundations, in order to respond to this alleged general malaise, rush to save the universities that they rightly consider irreplaceable, but that have, perhaps, the smallest need. Thus they have given, over the last decade, $60 million to Harvard, $55 million to Yale, and $35 million to Stanford. They have given small fractions of these sums to universities with much greater need. We are going to perpetuate this mistake as long as we are willing to perpetuate its cause, the myth that all independent universities are poor.

Another confusion that we need to combat is a pervasive misuse of the term "subsidy." I have heard many in the independent sector speak of its need for a subsidy from the government if it is to continue its work. But this misstates the situation. The independent sector subsidizes the taxpayer nationally to the extent of at least $8 billion a year – $6 billion in operating expense and $2 billion in annualized capital expense. Eight billion dollars is a conservative estimate but it represents a very substantial subsidy of the taxpayer. If a national program were to reduce the current subsidy from the independent sector by granting $2 billion in student aid to those enrolled in the independent sector, this would compensate the independent sector for its public services at no more than 25 cents on the dollar. That is why I have been suggesting that the independent sector is the golden goose that provides a dollar's worth of egg for every six cents of federal and state ration. The goose, of course, is slowly starving on that ration and will eventually cease to lay eggs; on a ration of thirty cents, it would continue to subsidize the taxpayer by laying golden eggs. We should be asking compensation for the subsidy we are making to the public weal. There will be no question of a subsidy for ourselves until the federal and state governments provide more than $8 billion annually to the independent sector. No one can foresee that day.

And there are other facts we need to be assiduous in calling to the public attention. The Census Bureau has recently reported that while 53% of the students in the state sector come from families with incomes less than $15,000, the figure for the independent sector is fully 41%. This remarkable fact should dispel for once and all that somehow the independent sector is a haven for the indolent rich.

If we are finally to turn Congress around, we must present our case in such simple but accurate terms as these.

Indirect aid, transmitted through the free choice of students, stands a better chance of avoiding the kinds of controls against which several members of this association have spoken and acted so effectively. We should look to a program of aid that goes directly to the student and does what it can to narrow the tuition gap between the two sectors. But I am still opposed to the raising of tuition in the state sector. This is a protectionist expedient, and if we adopt it, we shall easily be misinterpreted as opposing equal educational opportunity. And we are not opposing it: for we believe that every qualified student who desires it should have a chance at a higher education.

In this connection, I believe that we should discourage dependency on loans for the financing of undergraduate education. It seems to me entirely appropriate that every graduate of a medical school should pay back $40,000 or so of the cost of his education. As long as we expect taxi drivers to pay $30,000 (about two years' salary) for a medallion, we can expect physicians to pay $40,000 (which is less than one year's income) for their training.

But it can be disastrous for a graduate from a poor family to leave school with a debt of $5,000. If such a graduate marries a spouse with a similar debt, the couple have a combined negative dowry of $10,000. They will be lucky to own a house. If they have themselves come to college out of poverty, they will be prevented from escaping it. At best they will be stranded on its margin and at worst return to its center.

From the point of view of Congress, people whose $10,000 negative dowry prevents them from buying a house are a serious problem: they depress the housing industry. Presented to the Congress seriously and effectively, this argument can carry a good deal of weight. But at present we have no effective organization to present this case.

The time has come for us to build a new national organization to represent the independent sector. The National Council of Independent Colleges and Universities cannot do so, for it is part of the American Association of Colleges. And the AAC has – and must have – a divided loyalty. It must be so judicious in representing its diverse constituency that it cannot articulate a program of advocacy in behalf of part of its membership.

I believe the best base for a new lobbying voice for the independent sector is the 38 existing state associations of independent colleges and universities. These are already vigorous. They are already doing a better job within the individual states than our national organizations. A simple consortium of these 38 organizations could give us a lean, effective organization with a small but highly competent staff. Much of the research that such an organization would need for its lobbying efforts is already being done by state associations and individual institutions. We do not need a redundant staff to duplicate this research: we need logistics to get it to the front lines.

Once such an organization is in operation, it can serve as a forum in which the independent sector can develop a common position. Once its position is developed, the leaders of our organization can negotiate from strength with the leaders of such organizations as the American Association of State Colleges

and Universities. It should be our purpose to work out in advance the necessary compromises to express the common interest of both the independent and state sectors. The educational community can then address the Congress with a united and therefore credible voice. A voice to which Congress will listen.

Finally, I think it is essential that our sector support a reformation of the present federal student aid program. We should oppose the removal of the half-cost limitation on the SEOG, and advocate that its maximum value be increased to $1600. We should further support the inclusion of a measure of self-help in the SEOG program. It would be entirely reasonable to require $1000 of self-help before a student is eligible for an SEOG grant. A student who is not willing to work nine hours a week at the minimum wage does not have sufficient motivation for higher education to justify public support in gaining it.

If $1000 of self-help were required for an SEOG, it would shift the distribution of SEOG funds from the present 60/40 favoring the state sector to 60/40 favoring the independent sector. This would substantially narrow the tuition gap and thereby give more students the opportunity to choose between state and independent institutions.

The President's Role in the Selection of Faculty

With this background in place, I can now turn to my topic for the evening, "The President's Role in the Selection of Faculty."

I think we all realize that we do not know, any more than does any executive, exactly what we ought to do at all times. The job does not come with the Voice of God proclaiming (with English subtitles) "This is what is required."

But a president must make full use of the leadership potentialities of his office as long as he has it. Recently I read *100 Years of Solitude* by Gabriel Garcia Marques. It is undoubtedly one of the great novels of this century. The central figure, Colonel Buendia, takes part in a 20-year revolution. At the end of this period he has at last brought the government to the negotiating table. And he discovers that he can share power with the government simply by compromising on three issues. These issues – on which he does give in – are the three over which the revolution had begun. After signing the agreements, Colonel Buendia laughs and says that after twenty years he has finally learned that all he had been fighting for was power.

Very often that is what happens when politicians and faculty members work their way up the ladder until they get to positions of responsibility. Once they get the position, instead of using it, (which was presumably the reason they fought for it) they expend all their ingenuity and energy merely on keeping it. Like Colonel Buendia, all they had been fighting for was power.

After I had been at the University of Texas for six months, I outlined what I thought was necessary to develop an excellent department of philosophy. As a 29-year old upstart, I was in no position to implement those ideas beyond the scope of my activities as a teacher and writer. Five years later, when I was much older and tireder and less interested in departmental problems, I became chairman and had the opportunity to do exactly what I had thought out several years earlier. By the time that I was allowed to work with an entire college as its Dean, I was about five years too old for the job. Since nobody would let me take it on when I was ready, I had to wait. But I certainly knew what I wanted to accomplish long before I had the chance to do it.

When I was being considered for the presidency of Boston University, my predecessor had resigned after two and a half years. The University was not able to choose so widely among candidates as it might have had the situation seemed more stable. The job was unpopular, and so I got a crack at it.

Had the situation not been serious, I doubt that I would have been asked, for it is still common to select University presidents from the ranks of the non-controversial. When the controversial achieve the president's office, it is often because they have seemed quiet and perhaps devoid of inconvenient ideas. I suppose that Robert Maynard Hutchins must have seemed no more than a charming and harmlessly exciting academic before he assumed the presidency of the University of Chicago.

But the only interesting question about the office of president is: what can a president do once he gets there? What is the available power of the position? What are its limitations?

It varies, obviously, from institution to institution. But to the extent that a president must raise funds, his influence can be great. There is no reason why presidents who are expected to assume the responsibility for floating their institutions – this must describe most who are in this room – should not avail themselves of the power that goes with this unpleasant responsibility.

In coming to Boston University, one of my first responsibilities was to meet an offer made by another institution to one of our most distinguished and valuable professors. Her chairman, who wanted to meet her offer, concluded that the funds were not available, but I was able to provide him with the extra funds to match it. That is one of the ways a president can intervene to prevent a crucial situation being dominated by an inappropriate precedent.

I soon learned at Boston University that some of its faculty and students were Marxists of the Groucho persuasion. You will remember that Groucho often said that he would not join a club that would have him as a member. The difference is that these faculty and students, feeling that way about the place, joined anyway. It posed a serious morale problem, and I decided that it could be solved only by recruiting so many tenured faculty from leading institutions that no member of the Boston University faculty could doubt that it was a very good place to be, a place that satisfied people of the highest ability.

A good example of how Boston University has begun to combat the morale problem is the Department of Economics. One of the first things I did was to assist in recruiting Paul Rosenstein-Rodan, who had been the founder of development economics, and commission him to establish a Center for Latin-American Development Studies. This was not to be within the department, but alongside it, so that each member of the Center also had an appointment in the department. The Chairman of the department very rapidly recruited a roster of distinguished economists from Harvard, Yale, Michigan and M.I.T. The department, when Rosenstein-Rodan had come in, had enrolled 15 graduate students. Three years later it had 134 of the highest quality. This was

simply because it was now the finest program in development economics in the country. In less than three years Rosenstein-Rodan and his colleagues put together a governing board that included Eduardo Frei (the former president of Chile), Carlos Lleros Restrepo (the former president of Colombia), Roberto Campos (a former minister of finance of Brazil), Robert McNamara (President of the World Bank) and Jan Tinbergen (the first Nobel laureate in economics). With advisors of this quality it is not surprising that the program has received substantial grant support.

This is a paradigm of the strategy being pursued at Boston University, which has been to make the University stronger financially by making it better academically.

I have also been concerned to tighten up the tenure proceedings at Boston University. These were formerly done with a haphazardness and regard for collegiality that were charming but did not necessarily assure the retention of faculty in whom a lifetime investment of $500,000 or more should be made. We brought in outside evaluators and established an *ad hoc* review process within the President's Office. Gradually each year we have reduced the number of tenure applications and gained an improved sense of what tenure standards should be.

The last issue I want to discuss is our method of calculating and assigning faculty teaching load. These are illustrated in Charts I-III. These are examples of charts developed each year at Boston University in the course of our budget analysis.

I have proposed that Boston University should aim for an effective University-wide teaching ratio of 20 to 1. This ratio, I believe, is fully consistent with a personalized education of the highest quality. There are, of course, many institutions with a nominal student/faculty ratio of 5 or 6 to 1, but in the classroom it turns out that the effective ratio is in fact 25 or 30 to 1. One of the books that we prepare for use at budget time lists the teaching load of each faculty member over the past three years. It shows the courses each member of the faculty has taught, the number of students in each, and any assistance he may have had from teaching fellows. One large department had 30 members, nine of whom taught less than 15 students a semester. Their research activities aside, the department could have lost these nine with minimal consequences for the effective student/faculty ratio. But several courses in this department enrolled 300 students each. For a very large number of students, the effective teaching ratio was 300 to 1. This ratio, the one that actually obtains in the classroom, is the concrete ratio; it is the only student/faculty ratio that counts.

I once presented a page from this book for analysis at an educational management seminar, and was told that it showed very poor management. No college president, I was told, ought to have that much information about his institution. Actually, it takes me no more than one eight-hour day to go through the entire book. And for this day's work, when I meet with a Dean, I can see what his effective position is in each department. I know which departments are utilizing their faculty effectively and which aren't, which of the chairmen are meeting reasonable expectations and which aren't.

EXAMPLE OF 20 1 STUDENT/FACULTY RATIO

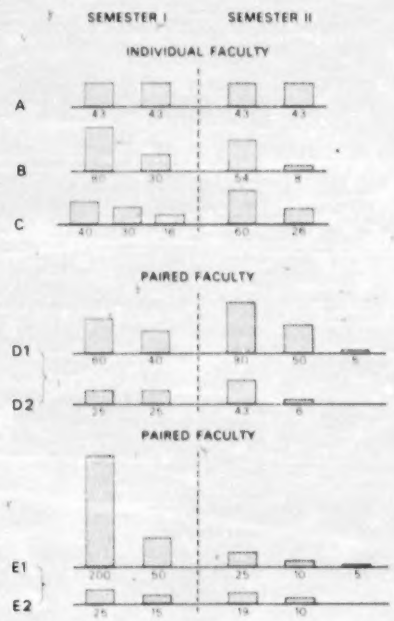
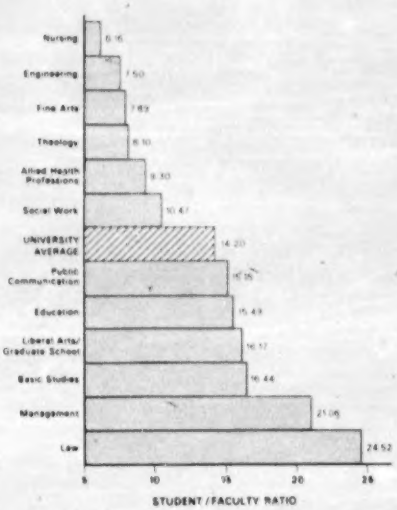


Chart I shows the student/faculty ratios at Boston University by college. You will note that university-wide we are still at 14 to 1. This overall figure does not tell much about what goes on in the classroom, for it obscures the fact that the ratio in the School of Nursing is 6 to 1 and in the School of Law, 25 to 1. When we eventually reach a university-wide average of 20 to 1, it is possible that no one school will have precisely that ratio. I believe that the School of Nursing can be reorganized to provide high-quality clinical education at a ratio of 10 to 1. Engineering can be raised to 15 to 1 simply through more effective utilization of faculty. The School for the Arts, in which the intensity of the programs is essential, can probably not exceed a ratio of 12 to 1. One could go on through the university: for each school there is a maximum ratio feasible academically and for the university as a whole there is a minimum ratio feasible financially. It is the job of management, through such analysis, to harmonize these conflicting imperatives.

STUDENT/FACULTY RATIOS
By College
1975-76



At a 20 to 1 student/faculty ratio, evenly distributed, and an assumption of four courses per student, each member of the faculty would teach 86 students per semester. The extra six students are necessary in order to fund sabbatical leaves. Chart II shows a scheme for assigning this 86 student load to a faculty and a set of courses. The first section gives examples for individual professors. Professor A – who is an expert in the law of averages – teaches two courses per semester, each enrolling 43 students. Professor B teaches, in the fall semester, 80 students in one course and 30 in another; in the spring, he teaches 54 students in one course and 6 in another. Professor C, in the fall semester, teaches three courses,

40 students in one, 30 in another, and 16 in a third; in the spring, he teaches two, with 60 in one and 16 in the other. None of these loads is excessive, and for the most part the professors concerned could handle their paper work without assistance. Professor B, were he a productive scholar, might rate a teaching assistant in the fall semester. Professor C might need one in the spring semester.

The second and third sections show what can be done by pairing professors. "Professors" D and E are each in fact a pair. In the fall semester, the D pair handles a total of 150 students, D1 taking 100 and D2 taking 50. In the spring term, the pair handles 194 students, 145 with D1 and 49 with D2.

The D2 slot would be appropriate for a professor excellent with small advanced classes and who produces a great deal of writing; the D1, to a professor with great skill at teaching undergraduate introductory courses, but no heavy involvement in research or writing.

The E pair includes one professor who teaches a lecture course with 200 students; this match allows the pair to teach additionally three moderate-sized courses and five that are quite small. In a department of any size, this system of pairing allows the maintenance of a flexible and humane teaching load without falling below an overall 20 to 1 ratio.

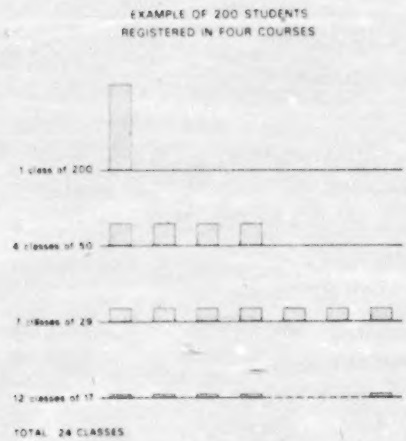


Chart III explores the 20 to 1 ratio from the point of view of the student. Let us say that a particular group of 200 freshmen all enroll in one course that has 200 students. That takes care of one of the four courses comprising a typical freshman load. It requires one-half of an FTE teacher. Next, each freshman enrolls in one of four classes with 50 students each. These require two FTE faculty teaching 2 courses each. Next, each freshman enrolls in one of seven courses enrolling a maximum of 29 students each. These require 3.5 FTE faculty, teaching two courses each. Finally, each freshman enrolls in one of twelve classes with a maximum of 17 students each. These require 4 FTE faculty teaching three courses each.

To recapitulate: the 200 students are taught by a total of 10 FTE faculty, for an overall ratio of 20 to 1. There are 24 courses, so that the average load per FTE faculty member is 2.4 courses. Each student attends one large lecture course, one course of 50 (in which it would be almost certain that the teacher would surely know him by name, and one small course of 17, in which the teacher would know him very well. If we exclude the lecture course (and we should not be shy of admitting that there are some subjects that can be handled best by the lecture method), the average size of the 23 remaining classes is 26.

Under the arrangement I have been describing, no class would be taught entirely by a teaching assistant, for teaching assistants would assist only with discussion sections of very large classes. In three out of four classes, the professor would be able to know every student. I think this model demonstrates the consistency of a 20 to 1 student/faculty ratio with education of the highest quality, that it can succeed in delivering to students a combination of courses that have intimacy and variety.

I would not argue that a 20 to 1 ratio is ideal for all institutions. I am sure that it is not for small ones that lack the scale necessary for efficient balancing of small and large classes and enough diverse faculty for pairing lecturers and discussion leaders. But I think the ratio makes sense in a university that has considerable diversity and extension. It cannot do so within the context of highly specialized institutions or within every department of a liberal arts college. But it does present a way for a complex and large university to realize the advantages, and at the same time reduce the disadvantages, of its size.

When a university has adopted some such faculty/student ratio, it becomes easy to calculate the theoretical capacity of a school or college from its FTE faculty. If a college has 23.4 FTE faculty, one can then say that its theoretical capacity is 469 students. One need not then go on with simple-minded earnestness to insist that it enroll this many students, but one is in a position to assess its actual enrollment and to establish whether there are educationally sound reasons why its actual enrollment ought to be less, or more, than its theoretical capacity. It would be foolish to insist that each department or each school be a tub on its own bottom; there is no way that one can run a nursing school or a school of music at 20 to 1. But it is equally true that a university must be a tub on its own bottom. That is the only way it can survive. Only a few uniquely rich universities can afford to run deficits without shortly facing the reckoning.

I suppose that many faculty would say that the proper role of the president in choosing faculty is to sign the letter of appointment after the provost drafts it. There may have been a time when that was a practicable way of doing things, when higher education was an economy expanding so rapidly that any number of mistakes could be obliterated by steady and inevitable growth. If this was ever true, it is no longer so.

The primary responsibility for recruiting a faculty must rest with that faculty itself. But when, for one reason or another, a faculty fails in performing this function, the central administration, if it sees the problem and the way to correct it, is terribly remiss if it does not intervene as best it can. That is why, ultimately, the president is given the power of appointment. If he is competent to use it – and he should be, if he is president – and those under him appear for the moment not to be, his course is clear. Certainly no great institution can be established by presidential fiat, or even by presidential intelligence, good will, and hard work. Excellence must grow ultimately from collegial effort. But the president is in a unique position to survey the diverse needs and priorities of an institution and to ensure a rational allocation of resources and a maintenance of standards. That is his proper role in the selection of faculty. □

Continued from Page 11

amendment to the minimum wage law, which was then being increased, I think from $1.60 to about $2.00. We took the position in this organization, which we carried through with astonishing effectiveness in the Congress, that students who were full-time students, working part-time for an educational institution, should *not* have the minimum wage law applied to them, but they would instead be paid $1.60 or 85% of the applicable minimum, whichever was greater. That went through. Now, that particular provision is threatened at the very time when the labor unions are going for a $3.00 minimum wage, which could really affect large numbers of students employed by members of the Association. What is now happening is a little odd, and will need to be watched very carefully. Congressman O'Hara of Michigan, who is Chairman of the Post-Secondary Education Subcommittee of House, Education and Labor, is sponsoring an amendment that would remove the 85% provision as to students employed in the work-study program – not as to students generally, but only as to students in work-study. It will not be administratively feasible to pay one rate of pay to students who are on work-study, and another rate of pay to students who are not on work-study within a single institution. Consequently, if the O'Hara amendment goes through, we're going to lose the whole 85% privilege across the board. I believe the Resolution Committee should consider the subject. That concludes our presentation.

JAMES M. COWLEY

I don't suppose, from what I hear, that most of you are too reticent about lobbying these days, but there has always been a kind of negative reaction because we're a charity we can't lobby. I effectively have taken the wraps off my client. The risks of not lobbying so far outweigh the risk of lobbying, and plus lobbying has never been an absolute prohibition – it's been a provision against expenditure of substantial amount of your budget (and then a time of lobbying?) and the word I've told anybody who asked me is "You'd better get busy and fight" or, you know, it may even be too late now, but it's getting later all the time.

As I was standing outside, I had the sinking realization that I've probably forgotten to alert you to what is probably the most serious exposure in the audit process.

I had been assuming that nobody had anything to hide, and probably nobody does, but if you've got a loser – if you've got a very questionable thing in the way of an expenditure, or something like that – it's far better to 'fess up and give the IRS the information than to try to get around it. There are criminal penalties on the individuals involved for making false statements to the Internal Revenue Service in the course of an audit – don't have any Rosemary Woods taking care of these problems. We've had problems come up where we were afraid there might even be criminal consequences of the information disclosed – some things that were done rather naively. But our advice has been, "You have no choice – if they ask for it, give it to them, and don't attempt to falsify anything, to conceal anything, or to alter any documents." That's a reason for being very careful about controlling the contact – to protect your own loyal staff people and employees who might, in some misguided attempt to protect the institution, lead the Internal Revenue Service astray if they're having a sort of free-flow exchange of information back and forth. Put a responsible person acquainted with this hazard in charge of the investigation to act as the conduit through which all the information flows.

Editor's note: *This is the end of the Dallin H. Oaks' Panel, Legal and Legislative Problems in Higher Education.*

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